

**CITY OF NEWPORT BEACH**  
**PLANNING COMMISSION STAFF REPORT**

November 17, 2011

Agenda Item: 3

**SUBJECT:** Newport Beach Country Club (PA2008-152)  
1600 East Coast Highway

- Mitigated Negative Declaration No. ND2010-010
- General Plan Amendment No. GP2008-005
- Planned Community Development Plan Amendment No. PC2008-001
- Site Development Review No. SD2011-003
- Limited Term Permit No. XP2011-005
- Development Agreement No. DA2010-005

**APPLICANT:** Newport Beach Country Club, Inc.

**PLANNER:** Rosalinh M. Ung, Associate Planner  
(949) 644-3208, [rung@newportbeachca.gov](mailto:rung@newportbeachca.gov)

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**INTRODUCTION**

On October 20, 2011, the Planning Commission conducted a public hearing on the application submitted by the Newport Beach Country Club, Inc. to redevelop the existing golf clubhouse and parking lot.

During the hearing, the Commission considered and generally supported the site development review application submitted by the applicant, including the changes incorporated, which addressed the Commission's previous concerns. The Commission expressed a lack of support for maintaining the frontage road to the abutting Armstrong Nursery and a desire to hide the proposed wrought iron fence along East Coast Highway behind additional landscaping.

**RECOMMENDATION**

1. Conduct a public hearing; and
2. Adopt Resolution No.\_\_\_\_ (Attachment PC1) recommending to the City Council:
  - a) Adoption of Mitigated Negative Declaration No. ND2010-010, including the Mitigation Monitoring and Report Program;
  - b) Approval of General Plan Amendment No. GP2008-005, Planned Community Development Plan Amendment No. PC2005-002; and
  - c) Approval of Site Development Review No. SD2011-003, Limited Term Permit No. XP2011-005, and Development Agreement No. DA2010-005.

## **DISCUSSION**

### **Environmental Review – Mitigated Negative Declaration**

The draft Initial Study/Mitigated Negative Declaration, responses to comments received and the Mitigation Monitoring and Reporting Program are attached to the prior reports. The public hearing process has not identified to date any additional information to suggest that the environmental record is inadequate. If the Commission concurs, it is staff's recommendation that the Commission recommend the City Council adopt the environmental document.

### **Planned Community Development Plan (PCDP) - Amendment**

The attached draft PCDP is identical to the draft PCDP recommended for adoption with the Golf Realty Fund application, with one exception; it amends the 35,000 square-foot maximum for the golf clubhouse to 56,000 square feet (Attachment PC2). In the event that the Planning Commission proceeds with the subject application without a recommendation on the preceeding Golf Realty Fund application, staff has prepared an alternative draft PCDP that only encompasses the 133-acre golf club site including the applicant's proposed 56,000 square-foot clubhouse and golf course. The alternative draft PCDP does not include any references to development of the tennis club site as proposed by Golf Realty Fund. (Attachment PC3). Neither draft PCDP provides for a particular architectural style for any development nor do they fix the design of the parking lot for the golf course. The final design of the parking lot would be a component of the Site Development Review application.

### **Site Development Review (SDR)**

In response to the Commission's concern about screening the proposed wrought iron fence along East Coast Highway, the plans have been modified to include a wider landscape buffer. Specifically, the landscape berm has been relocated to be adjacent to East Coast Highway, and graduates to 4 feet in height rather than 2 ½ feet as originally proposed. The buffer between East Coast Highway and the frontage road is now 18 feet in width. The frontage road has been reduced to 15 feet in width and will be one-way, limited to east-bound traffic only. The reduction in the width of the frontage road allows for an additional landscape buffer of 10 feet between the frontage road and the parking lot. Finally, the landscaped berm has been separated from the perimeter fence. The berm will shield the frontage road from East Coast Highway, and the separation between the berm and the perimeter fence will make the fencing less prominent as viewed from East Coast Highway. The modifications are depicted in Attachment PC4.

Although this revision addresses the Commission's concerns of screening the fence, views through the landscaping to the golf course may be desirable and this plan does not eliminate the frontage road as desired by the Commission.

Given the Commission's desire to approve the site plan without the frontage road, staff has conditioned the SDR application such that preferred parking lot design eliminates the frontage road (Condition #5). However, the City cannot control the existence of the easement or require its elimination, but if the easement is proven to exist, the parking lot shall be designed in conformance with Attachment PC4, including vehicle access be limited to one-way east-bound movements.

The parking lot layout is included in the site plan; however, staff has added a condition (Condition #7) that would allow the Community Development Director the ability to approve a modified design such that the layout could resemble the Golf Realty Fund proposal. Regardless of the final orientation of the drive aisles and parking spaces, the final parking lot plan would need to provide the minimum number of spaces and ample landscaping as depicted in the proposed site plan. The approval of the final parking lot design plan by the Director would be administrative with appropriate notice to the Planning Commission and City Council.

#### Development Agreement

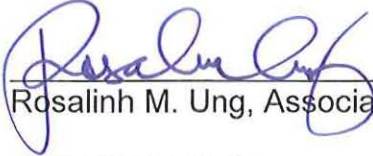
Municipal Code Section 15.45.020.A.2.c (Development Agreement Required) requires a development agreement as the project includes amendments to the General Plan and Zoning Code and construction of new non-residential development in Statistical Area L1 (Newport Center/Fashion Island).

The proposed Development Agreement (Attachment PC4) specifies the term, permitted use, density and intensity of the proposed development. The term of the agreement is for ten (10) years. Given that the site is within the Coastal Zone and that the City does not have a Certified Local Coastal Program, approval of the Development Agreement by the Coastal Commission is necessary prior to the agreement being executed and recorded. The development agreement would provide the vested right to proceed with the project as ultimately approved by the City and Coastal Commission.

The draft development agreement requires the payment of a "Public Benefit Fee" in the sum of ten dollars (\$10) per square-foot of construction for the proposed golf clubhouse (a maximum of \$560,000). This fee would be subject to Consumer Price Index adjustments.

The City Attorney's Office indicates that the draft agreement is consistent with applicable provisions of State law governing DAs.

Prepared by:

  
\_\_\_\_\_  
Rosalinh M. Ung, Associate Planner

Submitted by:

  
\_\_\_\_\_  
James Campbell, Principal Planner

**ATTACHMENTS**

- PC 1 Draft Resolution
- PC 2 Draft Planned Community Development Plan Amendment
- PC 3 Alternative Draft Planned Community Development Plan
- PC 4 Revision to Landscape Frontage
- PC 5 Draft Development Agreement

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**Attachment No. PC 1**  
Draft Resolution

RESOLUTION NO. \_\_\_\_

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH RECOMMENDING ADOPTION OF A MITIGATED NEGATIVE DECLARATION NO. ND2010-010 AND APPROVAL OF GENERAL PLAN AMENDMENT NO. GPA2008-005, PLANNED COMMUNITY DEVELOPMENT PLAN ADOPTION NO PC2008-001, SITE DEVELOPMENT REVIEW NO. SD2011-003, LIMITED TERM PERMIT NO. XP2011-005, AND DEVELOPMENT AGREEMENT NO. DA2010-005 FOR THE NEWPORT BEACH COUNTRY CLUB PROPERTY LOCATED AT 1600 EAST COAST HIGHWAY (PA2008-152)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by The Newport Beach Country Club, Inc., with respect to property located at 1600 East Coast Highway, and legally described as Parcels 1 and 3 of Parcel Map No. 79-704 and a Portion of Back Bay Drive as Shown on Parcel Map No. 79-704, requesting an approval to redevelop the existing golf clubhouse of the Newport Beach Country Club. The following approvals are requested or required in order to implement the project as proposed:
  - a. A General Plan Amendment to increase the allowable development limit in Anomaly No. 74 in Statistical Area L1 (Newport Center/Fashion Island) of the General Plan Land Use Element by 21,000 gross square feet, from 35,000 to 56,000 gross square feet.
  - b. A Planned Community Development Plan adoption to provide development standards and design guidelines for the golf course and its ancillary uses, pursuant to Chapter 20.35 of the Municipal Code.
  - c. A Site Development Review to allow the construction of 54,819 square-foot golf clubhouse with the associate parking lot and maintenance facility, pursuant to the Section 4.3 of the Newport Beach Country Planned Community Development Plan.
  - d. A Limited Term Permit (Temporary Structure and Uses) for the temporary use/structure during the clubhouse reconstruction, pursuant to Section 20.60.015 of the Municipal Code.
  - e. A Development Agreement pursuant to Section 15.45.020.A.2.c of the Municipal Code which requires a development agreement as the project includes amendments to the General Plan and Zoning Code and construction of new non-residential development in Statistical Area L1 (Newport Center/Fashion Island).

2. The application was deemed complete on October 23, 2008; and pursuant to Ordinance No. 2010-21, the application is being considered and evaluated pursuant to the Zoning Code in effect prior to November 25, 2010.
3. The subject property is located within the Newport Country Club Planned Community (PC-47) Zoning District and the General Plan Land Use Element category of Parks and Recreation (PR).
4. The subject property is located within the coastal zone and has the Coastal Land Use Plan category Parks and Recreation (PR).
5. Public hearings were held on August 4, 2011, October 20, 2011, and November 17, 2011, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

## SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. An Initial Study and Mitigated Negative Declaration have been prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3.
2. The draft Mitigated Negative Declaration was circulated for a 30-day comment period beginning on October 7, 2010, and ending on November 8, 2010. The contents of the environmental document and comments on the document were considered by the Planning Commission in its review of the proposed project.
3. On the basis of the entire environmental review record, the proposed project, with mitigation measures, will have a less than significant impact upon the environment and there are no known substantial adverse affects on human beings that would be caused. Additionally, there are no long-term environmental goals that would be compromised by the project, nor cumulative impacts anticipated in connection with the project. The mitigation measures identified and incorporated in the Mitigation Monitoring and Reporting Program are feasible and will reduce the potential environmental impacts to a less than significant level.
4. The Planning Commission finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.

### SECTION 3. REQUIRED FINDINGS.

1. The proposed project is consistent with the General Plan and Coastal Land Use Plan as follows:
  - a. The project site is located within the Statistical Area L1 of the General Plan Land Use Element. The Land Use Element designates the subject property Parks and Recreation (PR), which is intended for active public or private recreational use. Permitted uses include parks (both active and passive), golf courses, marina support facilities, aquatic facilities, tennis clubs and courts, private recreation, and similar facilities. The proposed redevelopment of the golf clubhouse consistent with the proposed alternative planned community development plan thereby would be consistent with this designation.
  - b. The General Plan limits total development on the subject site to 35,000 square feet per Anomaly No. 74. A general plan amendment to increase the maximum floor area to 56,000 square feet, a net increase of 21,000 square feet, is proposed in order to accommodate the proposed new golf clubhouse.
  - c. General Plan Policy LU 3.2 encourages the enhancement of existing neighborhoods, districts, and corridors, by allowing for re-use and infill with uses that are complementary in type, form, scale, and character. The policy states that changes in use and/or density/intensity should be considered only in those areas that are economically underperforming, are necessary to accommodate Newport Beach's share of projected regional population growth, improve the relationship and reduce commuting distance between home and jobs, or enhance the values that distinguish Newport Beach as a special place to live for its residents. The scale of growth and new development shall be coordinated with the provision of adequate infrastructure and public services, including standards for acceptable traffic level of service.

The proposed General Plan Amendment for increased intensity is consistent with General Plan Policy LU 3.2 as follows:

1. The increased intensity does not impact Newport Beach's share of projected regional population growth. The existing golf clubhouse was constructed in the 1950's and no longer meets the needs of its membership or the Newport Beach Community. National and international golf tournaments are held at the Newport Beach Country Club as well as numerous local and regional charitable events which distinguish Newport Beach from other destinations in the southern California area. The reconstruction and modernization of the clubhouse will enable the Newport Beach Country Club to retain its reputation as a world class sporting venue.



2. The increase in intensity would enhance the values that distinguish Newport Beach as a special place to live for its residents. The proposed reconstruction represents a significant investment to upgrade an aging facility with modern amenities for Newport Beach Country Club members and the greater Newport Beach community during special events, while retaining both active and passive open space in an urban environment.
- d. General Plan Policy LU 5.6.1 requires that buildings and properties be designed to ensure compatibility within and as interfaces between neighborhoods, districts, and corridors. An alternative planned community district development plan has been prepared that contains development regulations ensuring compatibility with the surrounding uses. The project, therefore, is consistent with this policy.
- e. General Plan Policy 6.14.4 reinforce the original design concept for Newport Center by concentrating the greatest building mass and height in the northeasterly section along San Joaquin Hill Roads, where the natural topography is highest and progressively scaling down building mass and height to follow the lower elevations toward the southwesterly edge along Coast Highway.

The proposed General Plan Amendment for increased intensity is consistent with General Plan Policy LU 6.14.4 in that the proposed reconstruction of the golf clubhouse will allow for the expansion of an existing use allowed by the Land Use Element of the General Plan. The proposed alternative planned community district development plan adheres to the original design concept for Newport Center by not creating a building that is exceedingly high in the lower area along Coast Highway. The golf clubhouse building height will not exceed the nonresidential, nonshoreline 32/50-foot height limit area.

- f. The Coastal Land Use Plan designates the subject site as Parks and Recreation (PR) and is consistent with the General Plan Land Use designation. The adoption of the amendment to the planned community development plan will ensure building design and siting regulations will protect coastal resources, including protection of views, and public access through height, setback, floor area, lot coverage, building bulk, and improved pedestrian access in accordance with Policy 2.2.2-4. The proposed golf clubhouse of the Newport Beach Country Club will continue to provide visitor-serving and recreational facilities as required by Policy 2.3.2-2. The proposed redevelopment of the project site is therefore consistent with the Coastal Land Use designation.
- g. The subject property has a zoning designation of Planned Community (PC-47). This PC zoning designation was adopted in 1997 by Ordinance 97-10, as a part of the City-wide amendment to the districting maps, in order to be consistent with the 1988 General Plan Land Use Element and Zoning Code. The City later assigned the PC with a number of 47 for tracking purposes. A Planned

Community Development Plan (development regulations), was not adopted when the PC District zoning designation was assigned to the subject property.

- h. A planned community development plan (PCDP) is proposed for the Golf Club site and not to include the entire area within the area designated of PC 47. The PCDP contains necessary development regulations to accommodate the applicant's project.
2. Charter Section 423 Analysis – Charter Section 423 requires that all proposed General Plan Amendments be reviewed to determine if the square footage (for non-residential projects), peak hour vehicle trip, or dwelling units thresholds would be exceeded as the means to determine whether a vote by the electorate would be required to approve the General Plan Amendment.

The subject property is located within Statistical Area L1 of the General Plan Land Use Element. There are no prior general plan amendments to this statistical area since 2006 when the General Plan Update was adopted. The proposed General Plan amendment would be the first amendment for this statistical area and would result in an increase of 21,000 gross square feet (GSF) of non-residential floor area. No increase in residential development is being proposed. There would be no increase to A.M. nor P.M. peak hour trip as the overall size of the golf course remains the same and the proposed clubhouse does not have separate trip rates and ITE predicts traffic based upon the number of acres and not floor area. Pursuant to Council Policy A-18, voter approval is not required as the proposed General Plan Amendment represents an increase of 21,000 square feet, no increase in residential development, and no increase to A.M. nor P.M. peak hour trip. The project, therefore, does not exceed Charter Section 423 thresholds as to require a vote of the electorate.

3. Site Development Review - The project consists of 54,819 square foot clubhouse with associate parking lot and maintenance facility. Pursuant to Section 4.3 of the PCDP, the following findings and facts in support of such findings are set forth:

Finding:

- A. *The Site Development Plan shall be in compliance with all other provisions of the PCDP (Newport Beach Country Club Planned Community Development Plan).*

Facts in Support of Finding:

- A-1. The PCDP provides a requirement that a site development review process be completed for construction of any new major building structure located on the subject site and would require consideration and approval by the Planning Commission prior to the issuance of grading or building permits. A site development review application has been submitted for the construction of the golf clubhouse and meets provisions stated in the PCDP in that and thereby meets the intent specified in Section 20.52.080 (Site Development Reviews) of the Municipal Code.

- A-2. The proposed site development plan is in compliance with all provisions of the PCDP as the proposed development complies with all development criteria specified in the PCDP.

Finding:

- B. *The Site Development Plan shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City.*

Facts in Support of Finding:

- B-1. The golf course is an existing use that has been in place since the 1950's. The reconstruction and modernization of the golf clubhouse will enable the golf course to retain its reputation as a world class sporting venue. The reconstruction represents a significant upgrade to an aging facility with modern amenities for its members and also to the greater Newport Beach community during special events, while retaining both active and passive open space in an urban environment.
- B-2. The proposed placement of the golf clubhouse and support uses will be within the same general location as the existing buildings. An open, landscaped area will remain between the porte-cochere and the adjacent tennis club facility. The elevation of the proposed development located on the adjacent Tennis Club site is higher than the golf club property, and combined with the significant separation from the proposed clubhouse, an adequate visual buffer between the two properties will be provided. The golf course has been designed and the buildings have been sited to compliment topography of the area and the variety of uses found within the Newport Center/Fashion Island area. The development will not constitute a hazard to the public convenience, health, interest, safety or general welfare for persons residing or working in the neighborhood of the facility.

Finding:

- C. *The Site Development Plan shall be sited and designed to maximize of aesthetic quality of the Newport Beach Country Club Planned Community Development Plan as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on East Coast Highway.*

Facts in Support of Finding:

- C-1. The proposed clubhouse will be 46 feet in height, within the maximum permitted building height of 50 feet. The proposed detailed architectural plans illustrate the clubhouse's building height, mass and design and demonstrate the project's compatibility with existing development and the City's adopted policies and standards. The edge of the porte-cochere will be set back approximately 165 feet from the proposed adjacent development. A proposed wrought iron fence along East Coast Highway and significant landscaping of the frontage and parking lot promote

compatibility and will allow unobstructed views of the golf course, thereby providing an aesthetic benefit view along Coast Highway. The entry drive has been enhanced with the addition of a landscaped median, sidewalks on both sides and a landscape buffer between the sidewalks and the road. The entry design with enhanced medians and mature trees presents a more upscale aesthetic appearance and compatible with the community.

Finding:

- D. *Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.*

Facts in Support of Finding:

- D-1. As proposed, entry driveway will be widened to align with the street portion south of East Coast Highway, thereby providing improved access to the site. Pedestrian access along entry driveway will be enhanced with sidewalks on both sides of the road. The porte-cochere entrance to the clubhouse is designed to provide enhanced circulation for bag drops and vehicular access to the parking area. A separate banquet drop-off and pick-up areas are proposed to improve circulation throughout the parking lot. The design of the parking area features will greatly improve circulation and provide adequate parking to accommodate the needs of members and guests. The proposed site plan also provides access to the adjacent Tennis Club site.
- D-2. The application includes two site plan alternatives to address the existing frontage road easement that presently provides access from the signalized intersection to the abutting Armstrong Nursery property. Should the frontage road remain, the existing entrance to the frontage road from Irvine Terrace will be moved approximately 60 feet farther away from Coast Highway to provide safer ingress and egress. Should the easement be terminated the alternate plan eliminates the frontage road easement thereby allowing increased landscaping along Coast Highway. In any case, road and access improvements provide additional safety to members and guests of the golf club.
4. Development Agreement – Municipal Code Section 15.45.020.A.2.c (Development Agreement Required) requires a development agreement as the project includes amendments to the General Plan and Zoning Code and construction of new non-residential development in Statistical Area L1 (Newport Center/Fashion Island). The development agreement includes all the mandatory elements for consideration and the public benefits are appropriate benefits to support conveying the vested development rights.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Planning Commission of the City of Newport Beach does hereby find, on the basis of the whole record, that there is no substantial evidence that the project will have a significant effect on the environment and that the Mitigated Negative Declaration reflects the Planning Commission's independent judgment and analysis. The Planning Commission hereby recommends that the City Council adopt Mitigated Negative Declaration, including the Mitigation Monitoring and Reporting Program attached as Exhibit "A". The document and all material, which constitute the record upon which this decision was based, are on file with the Planning Department, City Hall, 3300 Newport Boulevard, Newport Beach, California.
2. The Planning Commission of the City of Newport Beach finds that judicial challenges to the City's CEQA determinations and approvals of land use projects are costly and time consuming. In addition, project opponents often seek an award of attorneys' fees in such challenges. As project applicants are the primary beneficiaries of such approvals, it is appropriate that such applicants should bear the expense of defending against any such judicial challenge, and bear the responsibility for any costs, attorneys' fees, and damages which may be awarded to a successful challenger.
3. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council approve General Plan Amendment No. GP2008-005 to increase the maximum allowable development limit in Anomaly No. 74 in Statistical Area L1 (Newport Center/Fashion Island) of the General Plan Land Use Element by 21,000 gross square feet (from 35,000 square feet to 56,000 square feet), as depicted in Exhibit "B" attached hereto and incorporated by reference.
4. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council amend Planned Community Development Plan No. PD2008-001 to increase the size of the golf clubhouse from 35,000 to 56,000 square feet and to provide zoning development standards and design guidelines for the Golf Course and its ancillary uses, as depicted in Exhibit "C" attached hereto and incorporated by reference.
5. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council approve Limited Term Permit No. 2011-005 and Site Development Review No. SD2011-003, subject to the conditions set forth in Exhibit "D" attached hereto and incorporated by reference.
6. The Planning Commission of the City of Newport Beach does hereby recommend that the City Council approve Development Agreement No. 2010-005 as attached as Exhibit "E".

**PASSED, APPROVED AND ADOPTED THIS 17TH OF NOVEMBER, 2011.**

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: \_\_\_\_\_  
Charles Unsworth, Chairman

BY: \_\_\_\_\_  
Bradley Hilgren, Secretary

**EXHIBIT "A"**  
**MITIGATION MONITORING AND REPORTING PROGRAM**

SC/MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Responsibility
<b>Aesthetics</b>				
SC-1	Prior to the issuance of building permits, the applicant shall prepare a photometric study in conjunction with a final lighting plan for approval by the Planning Division. The site shall not be excessively illuminated based on the luminance recommendations of the Illuminating Engineering Society of North America, or, if in the opinion of the Planning Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Planning Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.	Approval of photometric study	Prior to issuance of building permit	Planning Division
<b>Agricultural and Forest Resources</b>				
No significant impacts are anticipated and no mitigation measures are required.				
<b>Air Quality</b>				
SC-2	Adherence to SCAQMD Rule 402, which prohibits air contaminants or other materials that cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause injury or damage to business or property to be emitted within the SoCAB.	Periodic monitoring during construction	During construction activities	Community Development Department
SC-3	Adherence to SCAQMD Rule 403, which sets requirements for dust control associated with grading and construction activities.	Periodic monitoring during construction	During construction activities	Community Development Department
SC-4	Adherence to SCAQMD Rules 431.1 and 431.2, which require the use of low sulfur fuel for stationary construction equipment.	Periodic monitoring during construction	During construction activities	Community Development Department
SC-5	Adherence to SCAQMD Rule 1108, which sets limitations on ROG content in asphalt.	Periodic monitoring during construction	During construction activities	Community Development Department
SC-6	Adherence to SCAQMD Rule 1113, which sets limitations on ROG content in architectural coatings.	Periodic monitoring during construction	During construction activities	Community Development Department
SC-7	Adherence to Title 24 energy-efficient design requirements as well as the provision of window glazing, wall insulation, and efficient ventilation methods in accordance with the requirements of the Uniform Building Code.	Submit evidence of compliance during building plan check process	Prior to issuance of building permits	Building Division
<b>Biological Resources</b>				
No significant impacts to biological resources are anticipated and no mitigation measures are required.				
<b>Cultural Resources</b>				
SC-8	A qualified archaeological/paleontological monitor shall be retained by the project applicant	Submit proof of qualified	Prior to issuance of grading permit	Planning Division

SC/MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Responsibility
	who will be available during the grading and landform alteration phase and shall be contacted if cultural resources are encountered. In the event that cultural resources and/or fossils are encountered during construction activities, ground-disturbing excavations in the vicinity of the discovery shall be redirected or halted by the monitor until the find has been salvaged. The area surrounding any cultural materials or fossils encountered during grading shall also be investigated to determine the extent of the site. Any artifacts and/or fossils discovered during project construction shall be prepared to a point of identification and stabilized for long-term storage. Any discovery, along with supporting documentation and an itemized catalogue, shall be accessioned into the collections of a suitable repository. Curation costs to accession any collections shall be the responsibility of the project applicant.	archaeological/paleontological monitor		
MM-1	The City shall provide an opportunity for a Native American representative to monitor excavation activities. The representative shall be determined by the City based on input from concerned Native American tribes (i.e., Gabrielino, Juaneno, and Tongvas).	Submit proof of Native American observer	Prior to issuance of grading permit	Planning Division
<b>Geology and Soils</b>				
MM-3	Prior to issuance of the grading permit, an erosion control plan shall be submitted to and approved by the City's Chief Building Official.	Approval of erosion control plan	Prior to issuance of grading permit	Building Division
MM-4	Prior to issuance of a grading permit, the applicant shall submit a soils engineering report and final geotechnical report to the City's Chief Building Official for approval. The project shall be designed to incorporate the recommendations included in those reports that address site grading, site clearing, compaction, bearing capacity and settlement, lateral pressures, footing design, seismic design, slabs on grade, retaining wall design, subdrain design, concrete, surface drainage, landscape maintenance, etc.	Submittal of soils engineering report and final geotechnical report	Prior to issuance of grading permit	Building Division
<b>Greenhouse Gas Emissions</b>				
SC-9	All new buildings shall meet Title 24 requirements.	Submit evidence of compliance during building plan check process	Prior to issuance of building permit	Building Division
SC-10	Water conservation design features shall be incorporated into building and landscape designs.	Submit evidence of compliance	Prior to issuance of building permit	Planning Division and Public Works Department
<b>Hazards and Hazardous Materials</b>				
SC-11	Prior to any disturbance of the construction materials within the Golf Clubhouse and/or the Tennis Clubhouse, a comprehensive asbestos containing materials (ACM) and lead based paint (LBP) survey shall be conducted. Any repairs,	Submit ACM and LBP survey and site inspection	Prior to issuance of demolition permit for buildings	Building Division



SC/MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Responsibility
	renovations, removal or demolition activities that will impact the ACM and/or LBP or inaccessible ACM shall be performed by a licensed asbestos contractor. Inaccessible suspect ACM shall be tested prior to demolition or renovation. Proper safety procedures for the handling of suspect ACM and LBP shall be followed in accordance with federal, state and local regulatory requirements federal and California Occupation Safety and Health Administration (OSHA), and Air Quality Management District (AQMD) Rule 1403, which sets forth specific procedures and requirements related to demolition activities involving asbestos containing materials and SCAQMD Regulation X - National Emission Standards For Hazardous Air Pollutants, Subpart M - National Emission Standards For Asbestos, which include demolition activities involving asbestos.			
SC-12	During demolition, grading, and excavation, workers shall comply with the requirements of Title 8 of the California Code of Regulations Section 1532.1, which provides for exposure limits, exposure monitoring, respiratory protection, and good working practice by workers exposed to lead. Lead-contaminated debris and other wastes shall be managed and disposed of in accordance with the applicable provision of the California Health and Safety Code.	Periodic monitoring during demolition and site inspection	During demolition, grading and excavation	Building Division
<b>Hydrology and Water Quality</b>				
The applicant has prepared a Conceptual WQMP that identifies a range of BMPs and related water quality features to ensure that water quality impacts associated with the proposed project are reduced to an acceptable level. In addition, implementation of BMPs that will be included in the SWPPP will ensure that construction impacts are minimized. Similarly, BMPs will also be refined and incorporated into the project design to avoid post-construction impacts to water quality. Therefore, no significant impacts are anticipated and no mitigation measures are required.				
<b>Land Use and Planning</b>				
No significant impacts are anticipated and no mitigation measures are required.				
<b>Mineral Resources</b>				
No significant impacts are anticipated and no mitigation measures are required.				
<b>Noise</b>				
MM-5	During construction operations, the applicant or contractor shall provide evidence to the City that all construction equipment, stationary and mobile is equipped with properly operating and maintained muffling devices.	Submit construction schedule and site inspection	During construction operations	Building Division
MM-6	Prior to issuance of a grading permit, the applicant or contractor shall prepare a Construction Management Plan (CMP), which confirms that potential project-related and cumulative construction noise levels are minimized and do not exceed levels prescribed in the City's Noise Ordinance. The CMP shall include a requirement that the construction	Submit construction management plan	Prior to issuance of grading permit	Building Division

SC/MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Responsibility
	contractor must notify the nearby residents of the construction schedule for the proposed project, and shall keep them informed on any changes to the schedule. The notification shall also identify the name and phone number of a contact person in case of complaints. The contact person shall take all reasonable steps to resolve the complaint.			
MM-7	Prior to occupancy, heating, venting, and air conditioning (HVAC) equipment in or adjacent to residential areas shall be shown by computation, based on the sound rating of the proposed equipment, not to exceed an A-weighted sound pressure level of fifty (50) dBA or not to exceed an A-weighted sound pressure level of fifty-five (55) dBA and be installed with a timing device that will deactivate the equipment during the hours of 10:00 p.m. to 7:00 a.m.	Submit evidence of HVAC equipment sound rating (adjacent to residential areas) during building plan check process	Prior to issuance of building permit	Building Division
<b>Population and Housing</b>				
No significant impacts are anticipated and no mitigation measures are required.				
<b>Public Services</b>				
No significant impacts are anticipated and no mitigation measures are required.				
<b>Recreation</b>				
No significant impacts are anticipated and no mitigation measures are required.				
<b>Traffic and Circulation</b>				
MM-8	<p>Prior to issuance of grading permits for the proposed project by the long-term lease holder and/or the redevelopment of the adjacent tennis complex as proposed by the underlying property owner, whichever occurs first, the circulation conflict at Irvine Terrace/Country Club Drive shall be resolved by one of the following methods.</p> <p>a. The proposed project shall be modified to shift Country Club Drive approximately 30 feet to the south to accommodate the tennis complex redevelopment plan; or</p> <p>b. The bungalow units proposed adjacent to the site on the north side of Country Club Drive proposed by the property owner as part of application PA 2005-140 shall be modified, reoriented, reduced, or shifted to the north to avoid the road in its current alignment; or</p> <p>c. Some combination or modification of both plans shall be devised that would reconcile the discrepancy between the two plans.</p>	Submittal of modified circulation plan	Prior to issuance of grading permit	Planning Division and Public Works Department
MM-9	Prior to the issuance of a grading permit, the existing access easement shall be revised so as to relocate its intersection with Irvine Terrace 85 feet northerly of where it currently exists. The new location shall be approved by the City	Submittal of revised access easement	Prior to issuance of grading permit	Planning Division and Public Works Department

SC/MM No.	Mitigation Measure	Method of Verification	Timing of Implementation	Responsibility
	Traffic Engineer prior to recordation.			
MM-10	<p>Prior to the issuance of a grading permit, the applicant or Contractor shall submit a Construction Staging, Parking and Traffic Control Plan for approval by the Public Works Department, which shall address issues pertaining to potential traffic conflicts during peak traffic periods, potential displacement of on-street parking, and safety.</p> <ul style="list-style-type: none"> <li>This plan shall identify the proposed construction staging area(s), construction crew parking area(s), estimated number and types of vehicles that will occur during that phase, the proposed arrival/departure routes and operational safeguards (e.g. flagmen, barricades, etc.) and hourly restrictions, if necessary, to avoid traffic conflicts during peak traffic periods and ensure safety.</li> <li>If necessary, the Construction Staging, Parking and Traffic Control Plan shall provide for an off-site parking lot for construction crews which will be shuttled to and from the project site at the beginning and end of each day until such time that the project site can accommodate off-street construction vehicle parking.</li> <li>The plan shall identify all construction traffic routes, which shall avoid narrow streets unless there is no alternative, and the plan shall not include any streets where some form of construction is underway within or adjacent to the street that would impact the efficacy of the proposed route.</li> <li>Dirt hauling shall not be scheduled during weekday peak hour traffic periods.</li> <li>The approved Construction Staging, Parking and Traffic Control Plan shall be implemented throughout each major construction phase.</li> </ul>	Approval of construction staging, parking and traffic control plan	Prior to commencement of each major phase of construction	Planning Division and Public Works Department
<b>Utilities and Service Systems</b>				
No significant impacts are anticipated and no mitigation measures are required.				

**EXHIBIT "B"**

**REVISED TABLE LU2  
ANOMALY LOCATIONS**

Table LU2 Anomaly Locations					
<i>Anomaly Number</i>	<i>Statistical Area</i>	<i>Land Use Designation</i>	<i>Development Limit (sf)</i>	<i>Development Limit (Other)</i>	<i>Additional Information</i>
74	L1	PR	35,000 56,000		
75	L1	PF			City Hall, and the administrative offices of the City of Newport Beach, and related parking, pursuant to Section 425 of the City Charter.
76	H1	CO-G		0.5 FAR	1.0 FAR permitted, provided all four legal lots are consolidated into one parcel to provide unified site design
77	H4	CV	240,000	157 Hotel Rooms (included in total square footage)	
78	B5	CM	139,840		
79	H4	CG		0.3/0.5	Development limit of 19,905 sq.ft. permitted, provided all six legal lots are consolidated into one parcel to provide unified site design

**EXHIBIT "C"**

**NEWPORT BEACH COUNTRY CLUB  
PLANNED COMMUNITY DEVELOPMENT PLAN**

**EXHIBIT "D"**

**CONDITIONS OF APPROVAL**

*(Project-specific conditions are in italics)*

**COMMUNITY DEVELOPMENT DEPARTMENT**

1. *Development shall be in substantial conformance with Site Development Review No. SD2011-003 and Limited Term Permit No. XP2011-005, stamped and dated with the date of this approval (Except as modified by applicable conditions of approval.)*
2. *Site Development Review No. SD2011-003 is approved for the golf course and the construction of an approximately 54,820 square-foot golf clubhouse with the associate parking lot and maintenance facility.*
3. *Limited Term Permit No. XP2011-005 is approved for the use of three (3) temporary modular buildings to accommodate on-going golf course/club operation during the 36-month construction of new golf clubhouse. The modular buildings shall be located on the golf course, shall not interfere with the construction activities or parking, and shall be removed from the golf course site upon completion/occupancy of the new clubhouse.*
4. *Site Development Review No. SD2011-003 and Limited Term Permit No. XP2011-005 shall expire unless exercised within the term of Development Agreement No. 2010-005, unless an extension is otherwise granted.*
5. *The preferred parking lot design eliminates the frontage road that provides access from the entry driveway to the Armstrong Nursery property to the west of the project site shall be eliminated as shown in Exhibit A2C dated September 19, 2011. In the event that the applicant must provide frontage road due to private easement obligations, the parking lot shall be designed in conformance with Attachment PC4 of the November 17, 2011, Planning Commission Staff Report, including vehicle access be limited to one-way east-bound movements.*
6. *Any substantial change to the approved plans, shall require an amendment to Site Development Review No. SD2011-003 and/or Limited Term Permit No. XP2011-005 or the processing of new permits.*
7. *A minimum of 334 parking spaces shall be provided and maintained for the Golf Course and its clubhouse. The design of the parking lot may be modified provided it meets applicable safety and design regulations or standards as determined by the City Traffic Engineer. The final parking lot layout including the orientation of the drive aisles and parking spaces shall be subject to the review and approval by the Community Development Director, with appropriate notification to the Planning Commission and City Council.*

8. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Use Permit.
9. The project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
10. Should this business or property be sold or otherwise come under different ownership, any future owners or assignees shall be notified in writing of the conditions of this approval by the current owner or leasing company.
11. This Site Development Review and Limited Term Permit may be modified or revoked by the City Council or Planning Commission should they determine that the proposed development, uses, and/ or conditions under which it is being operated or maintained is detrimental to the public health, welfare or materially injurious to property or improvements in the vicinity or if the property is operated or maintained so as to constitute a public nuisance.
12. Prior to the issuance of building permits, the applicant shall submit a landscape and irrigation plan prepared by a licensed landscape architect. These plans shall incorporate drought tolerant plantings and water efficient irrigation practices, and the plans shall be approved by the Planning Division and the Municipal Operations Department. All planting areas shall be provided with a permanent underground automatic sprinkler irrigation system of a design suitable for the type and arrangement of the plant materials selected. The irrigation system shall be adjustable based upon either a signal from a satellite or an on-site moisture-sensor. Planting areas adjacent to vehicular activity shall be protected by a continuous concrete curb or similar permanent barrier. Landscaping shall be located so as not to impede vehicular sight distance to the satisfaction of the Traffic Engineer.
13. All landscape materials and landscaped areas shall be installed and maintained in accordance with the approved landscape plan. All landscaped areas shall be maintained in a healthy and growing condition and shall receive regular pruning, fertilizing, mowing and trimming. All landscaped areas shall be kept free of weeds and debris. All irrigation systems shall be kept operable, including adjustments, replacements, repairs, and cleaning as part of regular maintenance.
14. Prior to the issuance of a certificate of occupancy, the applicant shall schedule an inspection by the Planning Division to confirm that all landscaping was installed in accordance with the approved plan.
15. Reclaimed water shall be used for all landscape areas to the maximum extent practicable recognizing that potable water is necessary in some areas of the golf course. Water for landscaped areas shall be used in accordance with the agreement between the Orange County Water District, the City of Newport Beach, and the Newport Beach Country Club, dated December 18, 1996. Potable water may be used

consistent with approvals from the City of Newport Beach, at mutually agreeable times.

16. Water leaving the project site due to over-irrigation of landscape shall be minimized to maximum extent feasible.
17. Watering of landscape areas shall be done during the early morning or evening hours (between 4:00 p.m. and 9:00 a.m.).
18. Water shall not be used to clean paved surfaces such as sidewalks, driveways, parking areas, etc. except to alleviate immediate safety or sanitation hazards.
19. Prior to issuance of any permit for development, approval from the California Coastal Commission shall be required.
20. All noise generated by the proposed use shall comply with the provisions of Chapter 10.26 and other applicable noise control requirements of the Newport Beach Municipal Code. The maximum noise shall be limited to no more than depicted below for the specified time periods unless the ambient noise level is higher:

	Between the hours of 7:00AM and 10:00PM		Between the hours of 10:00PM and 7:00AM	
Location	Interior	Exterior	Interior	Exterior
Residential Property	45dBA	55dBA	40dBA	50dBA
Residential Property located within 100 feet of a commercial property	45dBA	60dBA	45dBA	50dBA
Mixed Use Property	45dBA	60dBA	45dBA	50dBA
Commercial Property	N/A	65dBA	N/A	60dBA

21. Construction activities shall comply with Section 10.28.040 of the Newport Beach Municipal Code, which restricts hours of noise-generating construction activities to between the hours of 7:00 a.m. and 6:30 p.m., Monday through Friday and 8:00 a.m. and 6:00 p.m. on Saturday. Noise-generating construction activities are not permitted outside of these hours or on Sundays or Holidays.
22. The applicant shall ensure that the trash dumpsters and/or receptacles are maintained to control odors. This may include the provision of either fully self-contained dumpsters or periodic steam cleaning of the dumpsters, if deemed necessary by the Community Development Department. Cleaning and maintenance of trash dumpsters shall be done in compliance with the provisions of Title 14, including all future amendments (including Water Quality related requirements).
23. Storage outside of buildings or within the parking lot of the property shall be prohibited, with the exception of the required trash container enclosure. Outdoor storage of golf course-related equipment and supplies shall be permitted within the screened maintenance yard.
24. A Special Event Permit is required for any event or promotional activity outside the



normal operational characteristics of the approved use, as conditioned, or that would attract large crowds, involve the sale of alcoholic beverages, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.

25. All proposed signs shall be in conformance with the provision of the Newport Beach Country Club Planned Community Development Plan and Chapter 20.42 of the Newport Beach Municipal Code and shall be reviewed and approved by the City Traffic Engineer if located adjacent to the vehicular ingress and egress.
26. The final location of the signs shall be reviewed by the City Traffic Engineer and shall conform to City Standard 110-L to ensure that adequate vehicular sight distance is provided.
27. Lighting shall be in compliance with applicable standards of the Newport Beach Country Club Planned Community Development Plan and Section 20.30.070 of the Newport Beach Municipal Code. Exterior on-site lighting shall be shielded and confined within site boundaries. No direct rays or glare are permitted to shine onto public streets or adjacent sites or create a public nuisance. "Walpak" and up-lighting type fixtures are not permitted. Parking area lighting shall have zero cut-off fixtures.
28. The site shall not be excessively illuminated based on the outdoor lighting standards contained within Section 20.30.070 of the Zoning Code, or, if in the opinion of the Community Development Director, the illumination creates an unacceptable negative impact on surrounding land uses or environmental resources. The Community Development Director may order the dimming of light sources or other remediation upon finding that the site is excessively illuminated.
29. Prior to the issuance of building permits the applicant shall prepare photometric study in conjunction with a final lighting plan for approval by the Planning Division. The survey shall show that lighting values are "1" or less at all property lines.
30. Prior to issuance of the certificate of occupancy or final of building permits the applicant shall schedule an evening inspection by the Code Enforcement Division to confirm control of all lighting sources.
31. Kitchen exhaust fans shall be installed/maintained in accordance with the Uniform Mechanical Code and with pollution control units to filter and control odors.
32. *The construction and equipment staging area shall be located in the least visually prominent area on the site and shall be properly maintained and/or screened to minimize potential unsightly conditions.*
33. *A screen and security fence that is a minimum of six feet high shall be placed around the construction site during construction.*
34. *Construction equipment and materials shall be properly stored on the site when not in use.*

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35. Prior to the issuance of any building permit, the applicant shall pay any unpaid administrative costs associated with the processing of this application to the Planning Division.
36. To the fullest extent permitted by law, applicant shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Newport Beach Country Club development including, but not limited to General Plan Amendment No. GP2008-005, Planned Community Development Plan Amendment No. PC2008-001, Development Agreement No. DA2010-005, Limited Term Permit No. XP2011-005, Mitigated Negative Declaration No. ND2010-010, and Site Development Review No. SD2011-003. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.
37. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.
38. Prior to the issuance of grading permits, a Storm Water Pollution Prevention Plan (SWPPP) and Notice of Intent (NOI) to comply with the General Permit for Construction Activities shall be prepared, submitted to the State Water Quality Control Board for approval and made part of the construction program. The project applicant will provide the City with a copy of the NOI and their application check as proof of filing with the State Water Quality Control Board. This plan will detail measures and practices that will be in effect during construction to minimize the project's impact on water quality.
39. Prior to issuance of grading permits, the applicant shall prepare and submit a Water Quality Management Plan (WQMP) for the proposed project, subject to the approval of the Building Division and Code and Water Quality Enforcement Division. The WQMP shall provide appropriate Best Management Practices (BMPs) to ensure that no violations of water quality standards or waste discharge requirements occur.
40. The applicant shall comply with SCAQMD Rule 403 requirements as follows:

Land Clearing/Earth-Moving

- a. Exposed pits (i.e., gravel, soil, dirt) with five percent or greater silt content shall be watered twice daily, enclosed, covered, or treated with non-toxic soil stabilizers according to manufacturers' specifications.
- b. All other active sites shall be watered twice daily.
- c. All grading activities shall cease during second stage smog alerts and periods of high winds (i.e., greater than 25 mph) if soil is being transported to off-site locations and cannot be controlled by watering.
- d. All trucks hauling dirt, sand, soil, or other loose materials off-site shall be covered or wetted or shall maintain at least two feet of freeboard (i.e., minimum vertical distance between the top of the load and the top of the trailer).
- e. Portions of the construction site to remain inactive longer than a period of three months shall be seeded and watered until grass cover is grown or otherwise stabilized in a manner acceptable to the City.
- f. All vehicles on the construction site shall travel at speeds less than 15 mph.
- g. All diesel-powered vehicles and equipment shall be properly operated and maintained.
- h. All diesel-powered vehicles and gasoline-powered equipment shall be turned off when not in use for more than five minutes.
- j. The construction contractor shall utilize electric or natural gas-powered equipment instead of gasoline or diesel-powered engines, where feasible.

Paved Roads

- k. All construction roads internal to the construction site that have a traffic volume of more than 50 daily trips by construction equipment, or 150 total daily trips for all vehicles, shall be surfaced with base material or decomposed granite, or shall be paved.
- l. Streets shall be swept hourly if visible soil material has been carried onto adjacent public paved roads.
- m. Construction equipment shall be visually inspected prior to leaving the site and loose dirt shall be washed off with wheel washers as necessary.

Unpaved Staging Areas or Roads

- n. Water or non-toxic soil stabilizers shall be applied, according to manufacturers' specifications, as needed to reduce off-site transport of fugitive dust from all unpaved staging areas and unpaved road surfaces.

**FIRE DEPARTMENT**

- 41. Automatic fire sprinklers shall be required for all new construction that exceeds 5,000 square feet in size, is located more than 150 feet from an approved fire access road, and/or based on occupancy classification. The sprinkler system shall be monitored by a UL certified alarm service company.
- 42. All buildings may require a fire alarm system depending upon occupancy classification.
- 43. Fire hydrant(s) shall be provided every 300 feet along fire access road. The number and location of the fire hydrant shall be determined by the Fire Department.
- 44. Any automatic gates shall require a "Knox" key switch and an approved remote opening device. Minimum width of access shall be 14 feet.
- 45. All elevators shall be gurney accommodating.
- 46. The use or storage of portable propane heaters is prohibited. Heaters for future outdoor areas shall be fixed and plumbed with natural gas.

**MUNICIPAL OPERATIONS DEPARTMENT**

- 47. The applicant shall conduct a cross-connection shut down test annually with the Orange County Health Department, City and State Health Department due to recycled water on the premises. Documentation of successful tests shall be submitted to the Municipal Operation Department within 30 days of the test.

**PUBLIC WORKS DEPARTMENT**

- 48. All runoff discharges shall comply with the City's water quality and on-site non-storm runoff retention requirements.
- 49. Traffic signal modifications may be needed to the existing traffic signal at the intersection of Irvine Terrace/East Coast Highway due to the modified main entry, including but not limited to new traffic signal poles, loop detection, conduit, striping, etc. The applicant is responsible for costs associated with the design and installation of all traffic signal modification improvements. The limits and extent of work will be determined based on the final approved Irvine Terrace/Coast Highway entry configuration.

50. All on-site drainage, sanitary sewer, water, and electrical systems shall be privately owned, operated, and maintained.
51. The parking lot and vehicle circulation system shall be subject to further review by the City Traffic Engineer. Parking lot layout shall comply with City Standard STD-805-L-A and STD-805-L-B. Main driveways, service access, and driveways to parking areas shall be controlled by appropriate signage (i.e. stop signs).
52. All improvements shall be constructed as required by Ordinance and the Public Works Department.
53. The intersection of the public streets, internal roadways, and drive aisle shall be designed to provide adequate sight distance per City of Newport Beach Standard Drawing STD-110-L. Slopes, landscaping, walls, signs, and other obstructions shall be considered in the sight distance requirements. Landscaping within the sight lines (sight cone) shall not exceed 24-inches in height and the monument identification sign must be located outside the line of sight cone. The sight distance may be modified at non-critical locations, subject to approval by the Traffic Engineer.
54. An encroachment permit is required for all construction activities within the public right-of-way.
55. An encroachment agreement is required for all private encroachments in the public right-of-way. All private encroachments shall comply with City Council Policy L-6, Private Encroachments in the Public Right-of-Way.
56. Any damage to public improvements within the public right-of-way attributable to on-site development may require additional reconstruction within the public right-of-way at the discretion of the Public Works Inspector.
57. ADA compliant curb ramps shall be installed at all intersections on Irvine Terrace, Coast Highway and within the interior parking area.
58. The domestic water supply shall have a separate water meter and back flow preventer. The domestic water proposed off of the water main on Irvine Terrace shall have a water meter and back flow preventer. Identify the size of the proposed domestic water line.

#### **MITIGATION MEASURES**

59. The applicant shall comply with all mitigation measures and standard conditions contained within the approved Mitigation Monitoring and Reporting Program of the adopted Mitigated Negative Declaration (Exhibit "A") for the project.

**EXHIBIT "E"**  
**DEVELOPMENT AGREEMENT**

## **Attachment No. PC 2**

Draft Planned Community Development  
Plan Amendment

***Newport Beach Country Club***  
**Planned Community Development Plan**

Date: November 17, 2011

Ordinance No. \_\_\_\_  
Adopted \_\_\_\_\_



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## 1.0 INTRODUCTION AND PURPOSE

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The Newport Beach Country Club Planned Community District (the PCD) is composed of the Golf Club, Tennis Club, Bungalows and Villas facilities, totaling approximately 145 acres. The PCD has been developed in accordance with the Newport Beach General Plan and is consistent with the Local Coastal Land Use Plan.

The purpose of this PCD is to provide for the classification and development of coordinated, cohesive, comprehensive planning project with limited mixed uses, including the private Golf Club, Tennis Club, 27 short-term rental units called the Bungalows with a spa/fitness area, and 5 semi-custom single-unit residential dwellings called the Villas.

Whenever the regulations contained in the PCD Regulations conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the PCD Regulations shall take precedence. The Newport Beach Municipal Code shall regulate all development within the PCD when such regulations are not provided within the PCD Regulations.

## **2.0 GENERAL CONDITIONS AND REGULATIONS**

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### **1. Alcoholic Beverage Consumption**

The consumption of alcoholic beverages within the PCD shall be in compliance with the State of California Department of Alcoholic Beverage Control and the Newport Beach Municipal Code. A use permit shall be required if the establishment operates past 11:00 p.m. any day of the week and a minor use permit shall be required if the establishment operates until 11:00 p.m. any day of the week.

### **2. Amplified Music**

All amplified music played after 10:00 p.m. within the PCD shall be confined within the interior of a building unless a Special Events Permit is obtained.

### **3. Archaeological/Paleontological Resources**

Development of the site is subject to the provisions of City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.

### **4. Architectural Design**

All development shall be designed with high quality architectural standards and shall be compatible with the surrounding uses. The development should be well-designed with coordinated, cohesive architecture and exhibiting the highest level of architectural and landscape quality in keeping with the PCD's prominent location in the Newport Center Planning Area. Massing offsets, variation of roof lines, varied textures, openings, recesses, and design accents on all building elevations shall be provided to enhance the architectural style. Architectural treatments for all ancillary facilities (i.e. storage, truck loading and unloading, and trash enclosures) shall be provided.

### **5. Building Codes**

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical and plumbing codes related thereto as adopted by the Newport Beach Municipal Code.

### **6. Exterior Storage Areas**

There shall be no exterior storage areas permitted with the exception of the greenskeeper/maintenance area which shall be enclosed by a minimum six foot plastered block wall.

## **7. Flood Protection**

Development of the subject property will be undertaken in accordance with the flood protection policies of the City.

## **8. Grading and Erosion Control**

Grading and erosion control measures shall be carried out in accordance with the provisions of the Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Community Development Department.

## **9. Gross Floor Area**

Gross floor area shall be defined as the total area of a building including the surrounding exterior walls.

## **10. Height and Grade**

The height of any structure within the PCD shall not exceed fifty (50) feet, unless otherwise specified. The height of a structure shall be the vertical distance between the highest point of the structure and the grade directly below. In determining the height of a sloped roof, the measurement shall be the vertical distance between the grade and the midpoint of the roof plane, provided that no part of the roof shall be extend more than five (5) feet above the permitted height in the height limitation zone, and any amendments shall be subject to the review and approval of the Community Development Director

## **11. Landscaping/Irrigation**

Landscaping and irrigation shall be provided in all areas not devoted to structures, parking lots, driveways, walkways, and tennis courts to enhance the appearance of the development, reduce heat and glare, control soil erosion, conserve water, screen adjacent land uses, and preserve the integrity of PCD. Landscaping and irrigation shall consist of a combination of trees, shrubs, groundcover and hardscape improvements. Landscaping shall be prepared in accordance with the Landscaping Standards and Water-Efficient Landscaping Sections of the Newport Beach Municipal Code and installed in accordance with the approved landscape plans prepared by a licensed landscape architect.

## **12. Lighting – Outdoor**

All new outdoor lighting shall be designed, shielded, aimed, located and maintained to shield adjacent uses/properties and to not produce glare onto adjacent uses/properties. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical

engineer. All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans.

### **13. Lighting – Parking & Walkways**

All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans. Light standards within parking lots shall be the minimum height required to effectively illuminate the parking area and eliminate spillover of light and glare onto adjoining uses/properties and roadways.

Parking lots and walkways accessing buildings shall be illuminated with a minimum of 0.5 foot-candle average on the driving or walking surface during the hours of operation and one hour thereafter. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer.

If the applicant wishes to deviate from this lighting standard, a lighting plan may be prepared by the applicant and submitted to the Community Development Director for review and approval.

### **14. Loading Areas for Non-Residential Uses**

All loading and unloading of goods delivery shall be performed onsite. Loading platforms and areas shall be screened from public view.

### **15. Parking Areas**

Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaping areas of the parking lots shall be kept free of dust, graffiti, and litter. All components of the parking areas including striping, paving, wheel stops, walls, and light standards of the parking lots shall be permanently maintained in good working condition. Access, location, parking space and lot dimensions, and parking lot improvements shall be in compliance with the Development Standards for Parking Areas Section of the Newport Beach Municipal Code.

### **16. Property Owner Approval**

Written property owner approval shall be required for the submittal of any site development review application and/or prior to grading and/or building permit issuance.

### **17. Outdoor Paging**

Outdoor paging shall be permitted at the Golf Club to call individuals to the tees and at the Tennis Club to call points during tennis tournaments.

## **18. Sewage Disposal**

Sewage disposal service facilities for the PCD will be provided by Orange County Sanitation District No. 5 and shall be subject to applicable regulations, permits and fees as prescribed by the Sanitation District.

## **19. Screening of Mechanical Equipments**

All new mechanical appurtenances (e.g., air conditioning, heating, ventilation ducts and exhaust vents, swimming pool and spa pumps and filters, transformers, utility vaults and emergency power generators) shall be screened from public view and adjacent land uses. The enclosure design shall be approved by the Community Development Department. All rooftop equipment (other than vents, wind turbines, etc.) shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance for each new or remodeled building. The mechanical appurtenances shall be subject to sound rating in accordance with the Exterior Noise Standards Section of the Newport Beach Municipal Code. Rooftop screening and enclosures shall be subject to the applicable height limit.

## **20. Screening of the Villas from Tennis Courts**

Adequate buffering between the Villas and tennis courts shall be provided and subject to the Site Development Review process. The exterior perimeter of the tennis courts facing Granville Condominiums, Granville Drive, and the Tennis Clubhouse parking lot shall be screened by a minimum ten-foot high chain link fence covered by a wind screen. Wind screen shall be maintained in good condition at all time.

## **21. Screening of the Villas' Pool/Spa Equipment**

All pool and/or spa equipment shall be enclosed by a minimum five-foot high block wall plastered or otherwise textured to match the building.

## **22. Special Events**

Temporary special community events, such as such as PGA Senior Classic golf tournaments, Team Tennis, Davis Cup Matches, and other similar events, are permitted in the PCD, and are subject to the Special Events Chapter of the Newport Beach Municipal Code. Temporary exterior storage associated with approved special events may be permitted provided it is appropriately screened and regulated with an approved Special Event Permit.

### **23. Temporary Structures and Uses**

Temporary structures and uses, including modular buildings for construction-related activities are permitted.

### **24. Trash Container Storage for Residential Dwellings-**

Trash container storage shall be out of view from public places, and may not be located in the required parking areas. If trash container storage areas cannot be located out of public view, they shall be screened from public view. Screening shall consist of fences, walls, and landscaping to a height at least 6 inches above the tops of the containers.

### **25. Trash Enclosures for Non-Residential Uses**

All trash enclosures for non-residential uses shall be provided and in accordance with the Solid Waste and Recyclable Materials Storage of the Newport Beach Municipal Code.

### **26. Tennis Club Site Phasing Plan-**

The phasing plan for the tennis club site which consists of the tennis club, villas and bungalows shall be subject to a site development review process.

### **27. Water Service**

Water service to the PCD will be provided by the City of Newport Beach and will be subject to applicable regulations, permits and fees as prescribed by the City.



### 3.0 LAND USE AND DEVELOPMENT REGULATIONS

---

#### 3.1 Golf Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the golf course and clubhouse.

##### A. Golf Course

An 18-hole championship golf course and related facilities (i.e. putting green, driving range, snack bar, starter shack, restroom facilities, etc.).

##### B. Golf Clubhouse and Ancillary Uses

###### 1. Building Area

The maximum allowable gross floor area for a golf clubhouse building shall be ~~35,000~~56,000 square feet, exclusive of any enclosed golf cart storage areas ramp and washing area. The greens keeper/maintenance buildings, snack bar, separate golf course restroom facilities, starter shack, and similar ancillary buildings are exempt from this development limit.

###### 2. Building Height

The maximum allowable building height for the Golf Clubhouse shall be 50 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulation of the PCD.

###### 3. Permitted Ancillary Uses

The following ancillary uses are allowed:

- Golf shop
- Administrative Offices
- Dining, and event areas
- Kitchen & Bar areas
- Banquet Rooms
- Men and Women's Card Rooms
- Health and fitness facility
- Restroom and Locker facilities
- Golf Club storage areas
- Employee lounge/lunch areas
- Meeting rooms

- Golf Cart Parking Storage and Washing Area
- Separate Snack Bar
- Separate Starter Shack
- Separate Golf Course Restrooms
- Hand Carwash Area
- Greenskeeper Maintenance Facility
- Temporary Construction Facilities
- Guard House
- Others (subject to an approval of the Community Development Director)

#### 4. Parking

Parking for the Golf Course and Golf Clubhouse shall be in accordance with following parking ratios (source: from Table 2 of the Circulation and Parking Evaluation by Kimley-Horn and Associates, Inc., September 2009 for Newport Beach Country Club – Clubhouse Improvement Project):

Golf Course: 8 spaces per hole

Golf Clubhouse:

Dining, assembly & meeting rooms: 1 per 3 seats or 1 per 35 square feet

Administrative Office: 4 per 1,000 square feet

Pro Shop: 4 per 1,000 square feet

Maintenance Facility: 2 per 1,000 square feet

Health and Fitness Facility: 4 per 1,000 square feet

The design of the parking lot and orientation of vehicular aisles and parking spaces shall be subject to the review and approval of the City Traffic Engineer and Community Development Director.

#### 5. Fencing

Golf Course perimeter fencing shall be wrought-iron with a maximum permitted height of six (6) feet.

### 3.2 Tennis Club

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the tennis courts and clubhouse.

#### A. **The Tennis Courts**

##### 1. Number of courts

The maximum allowable tennis courts shall be seven lighted tennis courts (six lighted championship courts and one lighted stadium-center court).

## **B. Tennis Clubhouse and Ancillary Uses**

### **1. Building Area**

The maximum allowable gross floor area for the Tennis Clubhouse shall be 3,725 square feet.

### **2. Building Height**

The maximum allowable building height for the Tennis Clubhouse shall be 30 feet, and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

### **3. Permitted Ancillary Uses**

The following ancillary uses are allowed:

- Tennis Shop
- Administrative Offices
- Concessions
- Restroom and Locker facilities
- Storage areas
- Spectator seating
- Others (subject to an approval of the Community Development Director)

### **4. Parking**

Parking for the Tennis Clubhouse and Courts shall be a minimum of 28 parking spaces.

## **3.3. The Villas**

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the villas.

### **1. Number of Units**

The maximum allowable number of single-family residential units shall be five (5).

### **2. Development Standards**

The following development standards shall apply to the Villas:

**The Villas Development Standards Table**

<b>Villa Designation</b>	<b>Villa A</b> TTM Lot #1	<b>Villa B</b> TTM Lot #2	<b>Villa C</b> TTM Lot #3	<b>Villa D</b> TTM Lot #4	<b>Villa E</b> TTM Lot #5
Lot Size	5,000 square feet minimum				
Lot Coverage (Maximum)	70%	65%	55%	40%	55%
Building Height	39 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations				
Building Side Yard Setbacks	3 feet minimum				
Building Front and Rear Yard Setbacks	5 feet minimum				
Enclosed Parking Space for Each Unit	2	2	3	3	2
Open Guest Parking Space for Each Unit	One space - could be located on the private driveway – No overhang to the private street/cul-de-sac is allowed				

### **3.4. The Bungalows**

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the bungalows, concierge and guest center, and spa facility.

#### **1. Number of Units**

The maximum allowable number of the Bungalows shall be 27 short-term guest rental units to be built in a clustered setting of single and two-story buildings.

#### **2. Permitted Ancillary Uses**

The following ancillary uses are allowed:

- Concierge office and guest meeting facility
- Swimming pool and Jacuzzi
- Spa facility that includes treatment rooms, fitness areas, and snack bar serving drinks, snacks and light breakfast and lunch items

3. Building Area

The maximum allowable gross floor area for the bungalows shall be 28,300 square feet with a 2,200 square foot concierge & guest center and a 7,500 square-foot spa facility.

4. Building Height

The maximum allowable building height for the bungalows shall be 31 feet, measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulations of the PCD.

5. Building Setbacks

The setback requirement shall be a minimum of 5 feet from any property line.

6. Parking

Parking for the bungalows shall be a minimum of 34 parking spaces located in proximity to the use.

**3.5 Signs**

**A. Sign Allowance**

1. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at Newport Beach Tennis Club's main entrance (Country Club Drive and Irvine Terrace). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
2. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at or near the vicinity of the Newport Beach Country Club's secondary entrance (Granville). Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height.
3. Building identification signs shall be allowed; one for each street frontage. If freestanding, this sign type shall not exceed a maximum height of five (5) feet in height. The maximum signage area shall not exceed seventy (70) square feet.
4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. The sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing

distance. This sign type shall not exceed a maximum of six (6) feet in height.

5. One (1) single or double faced, ground-mounted identification sign shall be allowed at the entrance road to the Bungalows. Total maximum signage area shall not exceed seventy-five (75) square feet and shall not exceed five (5) feet in height and fifteen (15) feet in length.

#### **B. Sign Standards**

1. The design and materials of all permanent signs in the Newport Beach Country Club Planned Community District shall be in accordance with Sign Section 3.5, unless otherwise approved by the Community Development Director.
2. All permanent signs shall be subject to a sign permit issued by the Community Development Department.
3. All signs shall be subject to the review of the City Traffic Engineer to ensure adequate sight distance in accordance with the provisions of the Newport Beach Municipal Code.
4. Sign illumination is permitted for all sign types. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.
5. All permanent signs together with the entirety of their supports, braces, guys, anchors, attachments and décor shall be properly maintained, legible, functional and safe with regards to appearance, structural integrity and electrical service.
6. Temporary signs that are visible from any public right-of-way shall be allowed up to a maximum of sixty (60) days and subject to a temporary sign permit issued by the Community Development Department.
7. If the applicant wishes to deviate from the sign standards identified herein, a comprehensive sign program may be prepared or a modification permit application may be submitted for review and consideration by the Zoning Administrator in accordance with the applicable provisions of the Newport Beach Municipal Code.

## **4.0 SITE DEVELOPMENT REVIEW**

---

### **4.1 Purpose**

The purpose of the Site Development Review process is to ensure new development proposals within the Newport Beach Country Club Planned Community Development are consistent with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the findings set forth below in sub-section 4.3.

### **4.2 Application**

An approval of Site Development Review application by the Planning Commission shall be required for the construction of any new structure prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission. Signs, , tenant improvements to any existing buildings, kiosks, and temporary structures are exempt from the site development review process and subject to the applicable City's permits. The decision of Planning Commission is the final, unless appealed in accordance with the Newport Beach Municipal Code.

### **4.3. Findings**

In addition to the general purposes set forth in sub-section 4.1 and in order to carry out the purposes of this chapter as established by said section, the Site Development Review procedures established by this Section shall be applied according to and in compliance with the following findings:

1. The development shall be in compliance with all other provisions of the Planned Community District Plan;
2. The development shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. The development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on Coast Highway; and

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

#### **4.4. Contents**

The Site Development Review application shall include all of the information and materials specified by the Community Development Director and any additional information review by the Planning Commission in order to conduct a thorough review of the project in question. The following plans/exhibits may include, but not limited to the following:

1. An aerial map showing the subject property, adjacent properties and identifying their uses.
2. Comprehensive elevations and floor plans for new structures with coordinated and complimentary architecture, design, materials and colors.
3. A parking and circulation plan showing golf cart and pedestrian paths in addition to streets and fire lanes.
4. A comprehensive, cohesive and coordinated preliminary landscape plan.
5. A comprehensive, cohesive and coordinated lighting plan showing type, location and color of all exterior lighting fixtures.
6. Comprehensive text and graphics describing the design philosophy for the architecture, landscape architecture, material and textures, color palette, lighting, and signage.
7. Text describing drainage and water quality mitigation measures.
8. A statement that the proposed new structure is consistent with the goals, policies, and actions of the General Plan and Planned Community Development Plan.

#### **4.5 Public Hearing –Required Notice**

A public hearing shall be held on all site development review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in



not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

#### **4.6 Expiration and Revocation Site Development Review Approvals**

1. Expiration. Any site development review approved in accordance with the terms of this planned community development plan shall expire within twenty-four (24) months from the effective date of final approval as specified in the Time Limits and Extensions Section of the Newport Beach Municipal Code, unless at the time of approval the Planning Commission has specified a different period of time or an extension is otherwise granted.
2. Violation of Terms. Any site development review approved in accordance with the terms of this planned community development plan may be revoked if any of the conditions or terms of such site development review are violated or if any law or ordinance is violated in connection therewith.
3. Public Hearing. The Planning Commission shall hold a public hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

#### **4.7. Fees**

The applicant shall pay a fee as established by Resolution of the Newport Beach City Council to the City with each application for Site Development Review under this planned community development plan.

## **Attachment No. PC 3**

Alternative draft Planned  
Community Development Plan  
(Applicable to only the 133-acre  
Golf Club Site)

***Newport Beach Country Club***  
**Planned Community Development Plan**

Date: November 17, 2011

Ordinance No. \_\_\_\_  
Adopted \_\_\_\_\_

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## 1.0 INTRODUCTION AND PURPOSE

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The Newport Beach Country Club Planned Community District (PCD) is composed of the Golf Club facilities, totaling approximately 133 acres. The PCD has been developed in accordance with the Newport Beach General Plan and is consistent with the Local Coastal Land Use Plan.

The purpose of this PCD is to provide for the classification and development of coordinated, cohesive, comprehensive planning project for the private Golf Club.

Whenever the regulations contained in the PCD Regulations conflict with the regulations of the Newport Beach Municipal Code, the regulations contained in the PCD Regulations shall take precedence. The Newport Beach Municipal Code shall regulate all development within the PCD when such regulations are not provided within the PCD Regulations.

## **2.0 GENERAL CONDITIONS AND REGULATIONS**

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### **1. Alcoholic Beverage Consumption**

The consumption of alcoholic beverages within the PCD shall be in compliance with the State of California Department of Alcoholic Beverage Control and the Newport Beach Municipal Code. A use permit shall be required if the establishment operates past 11:00 p.m. any day of the week and a minor use permit shall be required if the establishment operates until 11:00 p.m. any day of the week.

### **2. Amplified Music**

All amplified music played after 10:00 p.m. within the PCD shall be confined within the interior of a building unless a Special Events Permit is obtained.

### **3. Archaeological/Paleontological Resources**

Development of the site is subject to the provisions of City Council Policies K-5 and K-6 regarding archaeological and paleontological resources.

### **4. Architectural Design**

All development shall be designed with high quality architectural standards and shall be compatible with the surrounding uses. The development should be well-designed with coordinated, cohesive architecture and exhibiting the highest level of architectural and landscape quality in keeping with the PCD's prominent location in the Newport Center Planning Area. Massing offsets, variation of roof lines, varied textures, openings, recesses, and design accents on all building elevations shall be provided to enhance the architectural style. Architectural treatments for all ancillary facilities (i.e. storage, truck loading and unloading, and trash enclosures) shall be provided.

### **5. Building Codes**

Construction shall comply with applicable provisions of the California Building Code and the various other mechanical, electrical and plumbing codes related thereto as adopted by the Newport Beach Municipal Code.

### **6. Exterior Storage Areas**

There shall be no exterior storage areas permitted with the exception of the greenskeeper/maintenance area which shall be enclosed by a minimum six foot plastered block wall.

## **7. Flood Protection**

Development of the subject property will be undertaken in accordance with the flood protection policies of the City.

## **8. Grading and Erosion Control**

Grading and erosion control measures shall be carried out in accordance with the provisions of the Newport Beach Excavation and Grading Code and shall be subject to permits issued by the Community Development Department.

## **9. Gross Floor Area**

Gross floor area shall be defined as the total area of a building including the surrounding exterior walls.

## **10. Height and Grade**

The height of any structure within the PCD shall not exceed fifty (50) feet, unless otherwise specified. The height of a structure shall be the vertical distance between the highest point of the structure and the grade directly below. In determined the height of a sloped roof, the measurement shall be the vertical distance between the grade and the midpoint of the roof plane, provided that no part of the roof shall be extend more than five (5) feet above the permitted height in the height limitation zone, and any amendments shall be subject to the review and approval of the Community Development Director.

## **11. Landscaping/Irrigation**

Landscaping and irrigation shall be provided in all areas not devoted to structures, parking lots, driveways, and walkways to enhance the appearance of the development, reduce heat and glare, control soil erosion, conserve water, screen adjacent land uses, and preserve the integrity of PCD. Landscaping and irrigation shall consist of a combination of trees, shrubs, groundcover and hardscape improvements. Landscaping shall be prepared in accordance with the Landscaping Standards and Water-Efficient Landscaping Sections of the Newport Beach Municipal Code and installed in accordance with the approved landscape plans prepared by a licensed landscape architect.

## **12. Lighting – Outdoor**

All new outdoor lighting shall be designed, shielded, aimed, located and maintained to shield adjacent uses/properties and to not produce glare onto adjacent uses/properties. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical

engineer. All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans.

### **13. Lighting – Parking & Walkways**

All lighting and lighting fixtures that are provided shall be maintained in accordance with the approved lighting plans. Light standards within parking lots shall be the minimum height required to effectively illuminate the parking area and eliminate spillover of light and glare onto adjoining uses/properties and roadways.

Parking lots and walkways accessing buildings shall be illuminated with a minimum of 0.5 foot-candle average on the driving or walking surface during the hours of operation and one hour thereafter. Lighting plans shall be prepared in compliance with the Outdoor Lighting Section of the Newport Beach Municipal Code and shall be prepared by a licensed electrical engineer.

If the applicant wishes to deviate from this lighting standard, a lighting plan may be prepared by the applicant and submitted to the Community Development Director for review and approval.

### **14. Loading Areas for Non-Residential Uses**

All loading and unloading of goods delivery shall be performed onsite. Loading platforms and areas shall be screened from public view.

### **15. Parking Areas**

Parking spaces, driveways, maneuvering aisles, turnaround areas, and landscaping areas of the parking lots shall be kept free of dust, graffiti, and litter. All components of the parking areas including striping, paving, wheel stops, walls, and light standards of the parking lots shall be permanently maintained in good working condition. Access, location, parking space and lot dimensions, and parking lot improvements shall be in compliance with the Development Standards for Parking Areas Section of the Newport Beach Municipal Code.

### **16. Property Owner Approval**

Written property owner approval shall be required for the submittal of any site development review application and/or prior to grading and/or building permit issuance.

### **17. Outdoor Paging**

Outdoor paging shall be permitted at the Golf Club to call individuals to the tees.



## **18. Sewage Disposal**

Sewage disposal service facilities for the PCD will be provided by Orange County Sanitation District No. 5 and shall be subject to applicable regulations, permits and fees as prescribed by the Sanitation District.

## **19. Screening of Mechanical Equipments**

All new mechanical appurtenances (e.g., air conditioning, heating, ventilation ducts and exhaust vents, transformers, utility vaults and emergency power generators) shall be screened from public view and adjacent land uses. The enclosure design shall be approved by the Community Development Department. All rooftop equipment (other than vents, wind turbines, etc.) shall be architecturally treated or screened from off-site views in a manner compatible with the building materials prior to final building permit clearance for each new or remodeled building. The mechanical appurtenances shall be subject to sound rating in accordance with the Exterior Noise Standards Section of the Newport Beach Municipal Code. Rooftop screening and enclosures shall be subject to the applicable height limit.

## **20. RESERVED**

## **21. RESERVED**

## **22. Special Events**

Temporary special community events, such as PGA Senior Classic golf tournaments, and other similar events, are permitted in the PCD, and are subject to the Special Events Chapter of the Newport Beach Municipal Code. Temporary exterior storage associated with approved special events may be permitted provided it is appropriately screened and regulated with an approved Special Event Permit.

### **23. Temporary Structures and Uses**

Temporary structures and uses, including modular buildings for construction-related activities are permitted.

### **24. RESERVED**

### **25. Trash Enclosures for Non-Residential Uses**

All trash enclosures for non-residential uses shall be provided and in accordance with the Solid Waste and Recyclable Materials Storage of the Newport Beach Municipal Code.

### **26. RESERVED**

### **27. Water Service**

Water service to the PCD will be provided by the City of Newport Beach and will be subject to applicable regulations, permits and fees as prescribed by the City.

### **3.0 LAND USE AND DEVELOPMENT REGULATIONS**

---

#### **3.1 Golf Club**

Refer to Exhibit B - Conceptual Master Site Plan for the general location and placement of the golf course and clubhouse.

##### **A. Golf Course**

An 18-hole championship golf course and related facilities (i.e. putting green, driving range, snack bar, starter shack, restroom facilities, etc.).

##### **B. Golf Clubhouse and Ancillary Uses**

###### **1. Building Area**

The maximum allowable gross floor area for a golf clubhouse building shall be 56,000 square feet, exclusive of any enclosed golf cart storage areas ramp and washing area. The greenskeeper/maintenance buildings, snack bar, separate golf course restroom facilities, starter shack, and similar ancillary buildings are exempt from this development limit.

###### **2. Building Height**

The maximum allowable building height for the Golf Clubhouse shall be 50 feet and shall be measured in accordance with the Height and Grade definition of Section 2.0 General Conditions and Regulation of the PCD.

###### **3. Permitted Ancillary Uses**

The following ancillary uses are allowed:

- Golf shop
- Administrative Offices
- Dining, and event areas
- Kitchen & Bar areas
- Banquet Rooms
- Men and Women's Card Rooms
- Health and fitness facility
- Restroom and Locker facilities
- Golf Club storage areas
- Employee lounge/lunch areas
- Meeting rooms
- Golf Cart Parking Storage and Washing Area
- Separate Snack Bar

- Separate Starter Shack
- Separate Golf Course Restrooms
- Hand Carwash Area
- Greenskeeper Maintenance Facility
- Temporary Construction Facilities
- Guard House
- Others (subject to an approval of the Community Development Director)

#### 4. Parking

Parking for the Golf Course and Golf Clubhouse shall be in accordance with following parking ratios (source: from Table 2 of the Circulation and Parking Evaluation by Kimley-Horn and Associates, Inc., September 2009 for Newport Beach Country Club – Clubhouse Improvement Project):

Golf Course: 8 spaces per hole

Golf Clubhouse:

Dining, assembly & meeting rooms: 1 per 3 seats or 1 per 35 square feet

Administrative Office: 4 per 1,000 square feet

Pro Shop: 4 per 1,000 square feet

Maintenance Facility: 2 per 1,000 square feet

Health and Fitness Facility: 4 per 1,000 square feet

#### 5. Fencing

Golf Course perimeter fencing shall be wrought-iron with a maximum permitted height of six (6) feet.

#### 3.2 RESERVED

#### 3.3. RESERVED

#### 3.4. RESERVED

#### 3.5 Signs

##### A. Sign Allowance

1. One (1) single or double-faced, ground-mounted entrance identification sign shall be allowed at or near the vicinity of the Newport Beach Country Club's main entrance (Country Club Drive, Irvine Terrace and/or Coast Highway). Total maximum signage

area shall not exceed one hundred fifty-five (155) square feet and shall not exceed seven (7) feet in height.

2. **RESERVED**

3. Building identification signs shall be allowed; one for each street frontage. If freestanding, this sign type shall not exceed a maximum height of five (5) feet in height. The maximum signage area shall not exceed seventy (70) square feet.

4. Vehicular and pedestrian directional signs shall be allowed. This sign type may occur as a single-faced or double-faced sign. The sign shall be sized to allow for proper readability given the number of lines of copy, speed of traffic, setback off the road and viewing distance. This sign type shall not exceed a maximum of six (6) feet in height.

5. **RESERVED**

**B. Sign Standards**

1. The design and materials of all permanent signs in the Newport Beach Country Club Planned Community District shall be in accordance with Sign Section 3.5, unless otherwise approved by the Community Development Director.

2. All permanent signs shall be subject to a sign permit issued by the Community Development Department.

3. All signs shall be subject to the review of the City Traffic Engineer to ensure adequate sight distance in accordance with the provisions of the Newport Beach Municipal Code.

4. Sign illumination is permitted for all sign types. No sign shall be constructed or installed to rotate, gyrate, blink or move, or create the illusion of motion, in any fashion.

5. All permanent signs together with the entirety of their supports, braces, guys, anchors, attachments and décor shall be properly maintained, legible, functional and safe with regards to appearance, structural integrity and electrical service.

6. Temporary signs that are visible from any public right-of-way shall be allowed up to a maximum of sixty (60) days and subject to a temporary sign permit issued by the Community Development Department.

7. If the applicant wishes to deviate from the sign standards identified herein, a comprehensive sign program may be prepared or a modification permit application may be submitted for review and consideration by the Zoning Administrator in accordance with the applicable provisions of the Newport Beach Municipal Code.

DRAFT

## **4.0 SITE DEVELOPMENT REVIEW**

---

### **4.1 Purpose**

The purpose of the Site Development Review process is to ensure new development proposals within the Newport Beach Country Club Planned Community Development are consistent with the goals and policies of the General Plan, provisions of this Planned Community Development Plan, the Development Agreement and the findings set forth below in sub-section 4.3.

### **4.2 Application**

An approval of Site Development Review application by the Planning Commission shall be required for the construction of any new structure prior to the issuance of a grading or building permit or issuance of an approval in concept for Coastal Commission. Signs, cart barn, maintenance building, golf course's ancillary structures (i.e. free-standing restroom facilities, snack bar, and starter shack), tenant improvements to any existing buildings, kiosks, and temporary structures are exempt from the site development review process and subject to the applicable City's permits. The decision of Planning Commission is the final, unless appealed in accordance with the Newport Beach Municipal Code.

### **4.3. Findings**

In addition to the general purposes set forth in sub-section 4.1 and in order to carry out the purposes of this chapter as established by said section, the Site Development Review procedures established by this Section shall be applied according to and in compliance with the following findings:

1. The development shall be in compliance with all other provisions of the Planned Community District Plan;
2. The development shall be compatible with the character of the neighboring uses and surrounding sites and shall not be detrimental to the orderly and harmonious development of the surroundings and of the City;
3. The development shall be sited and designed to maximize the aesthetic quality of the project as viewed from surrounding roadways and properties, with special consideration given to the mass and bulk of buildings and the streetscape on Coast Highway; and

4. Site plan and layout of buildings, parking areas, pedestrian and vehicular access ways, landscaping and other site features shall give proper consideration to functional aspects of site development.

#### **4.4. Contents**

The Site Development Review application shall include all of the information and materials specified by the Community Development Director and any additional information review by the Planning Commission in order to conduct a thorough review of the project in question. The following plans/exhibits may include, but not limited to the following:

1. An aerial map showing the subject property, adjacent properties and identifying their uses.
2. Comprehensive elevations and floor plans for new structures with coordinated and complimentary architecture, design, materials and colors.
3. A parking and circulation plan showing golf cart and pedestrian paths in addition to streets and fire lanes.
4. A comprehensive, cohesive and coordinated preliminary landscape plan.
5. A comprehensive, cohesive and coordinated lighting plan showing type, location and color of all exterior lighting fixtures.
6. Comprehensive text and graphics describing the design philosophy for the architecture, landscape architecture, material and textures, color palette, lighting, and signage.
7. Text describing drainage and water quality mitigation measures.
8. A statement that the proposed new structure is consistent with the goals, policies, and actions of the General Plan and Planned Community Development Plan.

#### **4.5 Public Hearing –Required Notice**

A public hearing shall be held on all site development review applications. Notice of such hearing shall be mailed not less than ten (10) days before the hearing date, postage prepaid, using addresses from the last equalized assessment roll or, alternatively, from such other records as contain more recent addresses, to owners of property within a radius of three hundred (300) feet of the exterior boundaries of the subject property. It shall be the responsibility of the applicant to obtain and provide to the City the names and addresses of owners as required by this Section. In addition to the mailed notice, such hearing shall be posted in



not less than two (2) conspicuous places on or close to the property at least ten (10) days prior to the hearing.

#### **4.6 Expiration and Revocation Site Development Review Approvals**

1. Expiration. Any site development review approved in accordance with the terms of this planned community development plan shall expire within twenty-four (24) months from the effective date of final approval as specified in the Time Limits and Extensions Section of the Newport Beach Municipal Code, unless at the time of approval the Planning Commission has specified a different period of time or an extension is otherwise granted.
2. Violation of Terms. Any site development review approved in accordance with the terms of this planned community development plan may be revoked if any of the conditions or terms of such site development review are violated or if any law or ordinance is violated in connection therewith.
3. Public Hearing. The Planning Commission shall hold a public hearing on any proposed revocation after giving written notice to the permittee at least ten (10) days prior to the hearing, and shall submit its recommendations to the City Council. The City Council shall act thereon within sixty (60) days after receipt of the recommendation of the Planning Commission.

#### **4.7. Fees**

The applicant shall pay a fee as established by Resolution of the Newport Beach City Council to the City with each application for Site Development Review under this planned community development plan.

## **Attachment No. PC 4**

Revision to Landscape Frontage



**Attachment No. PC 5**  
Draft Development Agreement



# CITY OF NEWPORT BEACH

---

## CITY ATTORNEY'S OFFICE

**DATE:** October 20, 2011

**TO:** Community Development Department

**FROM:** Leonie Mulvihill, Assistant City Attorney

A handwritten signature in blue ink, appearing to be "LM", is written over the name "Leonie Mulvihill".

**MATTER:** IBC Country Club: Development Agreement  
No.: A11-00526

**SUBJECT:** Planning Commission Agenda Item No. 3 – October 20, 2011

---

Attached, please find the proposed Development Agreement that has been approved by the applicant.

*[A11-00526]- CDD from LM 10.20.11 re Agenda Item No. 3.*

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, CA 92663-3884  
Attn: City Clerk

---

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

## **DEVELOPMENT AGREEMENT**

**between**

**CITY OF NEWPORT BEACH**

**and**

**THE NEWPORT BEACH COUNTRY CLUB, INC.**

**(Concerning 1600 East Coast Highway)**

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## **DEVELOPMENT AGREEMENT**

**(Pursuant to California Government Code sections 65864-65869.5)**

This DEVELOPMENT AGREEMENT (the "Agreement") is dated for reference purposes as of the \_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Agreement Date"), and is being entered into by and between the CITY OF NEWPORT BEACH ("City"), and Newport Beach Country Club, Incorporated ("NBCC"). City and NBCC are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

### **RECITALS**

A. The Newport Beach Country Club, Incorporated (also referred to herein as NBCC) is the owner and operator of The Newport Beach Country Club subject to a lease with O'Hill Properties, a California limited partnership, Allan Fainbarg and Sara Fainbarg as Trustees of the Fainbarg Family Trust dated April 19, 1982 and Mesa Shopping Center-East, a California General Partnership (the "Lease"), the fee owners of the 132-acre parcel of real property (Property) that is described in the legal description attached hereto as Exhibit A and depicted on the Overall Site Plan attached hereto as Exhibit B1 and Overall Site Plan Alternative Exhibit B2.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the "Development Agreement Statute") authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" (the "Development Agreement Ordinance"). This Agreement is consistent with the Development Agreement Ordinance.

D. As detailed in Section 4 of this Agreement, NBCC has agreed to provide a Public Benefit Fee as consideration for this Agreement:

E. This Agreement is consistent with the City of Newport Beach General Plan, including without limitation the General Plan's designation of the Property as "PR (Parks and Recreation)" the Coastal Land Use Plan's designation as "OS (Open Space)" and the Newport Beach Country Club Planned Community District (PA 2008-152) that was adopted in 1997 by Ordinance No. 97-10 and amended in 201\_\_ by Ordinance No. \_\_\_\_ - \_\_\_\_ in order to establish appropriate zoning to regulate land use and development of the Property consistent with the General Plan.

F. In recognition of the significant public benefits that this Agreement provides, the City Council has found that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and

general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Final Environmental Impact Report for the City of Newport Beach General Plan 2006 Update (State Clearinghouse No. 2006011119) and the Mitigated Negative Declaration for the Newport Beach Country Club Planned Community District (PA 2008-152 by the City Council on or before the Agreement Date, both of which analyze the environmental effects of the proposed development of the Project on the Property; and (v) is consistent and has been approved consistent with provisions of California Government Code section 65867 and City of Newport Beach Municipal Code chapter 15.45.

G. On \_\_\_\_\_, 201\_, City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

H. On \_\_\_\_\_, 201\_, the City Council also held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, NBCC, and members of the public. On \_\_\_\_\_, 201\_, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. \_\_\_\_ (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Newport Beach General Plan and approving this Agreement.

#### AGREEMENT

NOW, THEREFORE, City and NBCC agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. \_\_\_\_ approving and adopting this Agreement.

"Agreement" shall mean this Zoning Implementation and Public Benefit Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources Code sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, section 15000 *et seq.*), as the same may be amended from time to time.

"City" shall mean the City of Newport Beach, a California charter city, and any successor or assignee of the rights and obligations of the City of Newport Beach hereunder.

“City Council” shall mean the governing body of City.

“City’s Affiliated Parties” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Claim” shall have the meaning ascribed in Section 10.1 of this Agreement.

“Coastal Development Permit” shall mean a permit issued by the California Coastal Commission pursuant to subdivision (a) of Section 30600 of the California Coastal Act.

“CPI Index” shall mean the Consumer Price Index published from time to time by the United States Department of Labor for all urban consumers (all items) for the smallest geographic area that includes the City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

“Cure Period” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Default” shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

“Develop” or “Development” shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms “Develop” and “Development,” as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

“Development Agreement Ordinance” shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

“Development Agreement Statute” shall mean California Government Code sections 65864-65869.5, inclusive.

“Development Exactions” shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

“Development Plan” shall mean the General Plan Land Use Element Amendment, the Newport Beach Planned Community District, Development Plan approved by the City Council on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement.

“Development Regulations” shall mean the following regulations as they are in effect as of the Effective Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted,

approved, or imposed after the Effective Date that impairs or restricts NBCC's rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by NBCC in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), and Title 20 of the Municipal Code (planning and zoning), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term "Development Regulations," as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

"Effective Date" shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and such Development Regulations and becomes effective, if applicable; (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement; or (iv) the date of approval of a coastal development permit for the Project. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

"Environmental Laws" means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws; statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("RCRA"); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as

amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

“First Building Permit” shall mean the first building permit that is issued for the project.

“General Plan” shall mean City’s 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, excluding any amendment after the Effective Date that impairs or restricts NBCC’s rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is specifically agreed to by NBCC. The Land Use Plan of the Land Use Element of the General Plan was approved by City voters in a general election on November 7, 2006.

“Hazardous Substances” means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as “hazardous” or “toxic” under any Environmental Law.

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed in Section 8.1 of this Agreement.

“Party” or “Parties” shall mean either City or NBCC or both, as determined by the context.

“Project” shall mean all on-site and off-site improvements that NBCC is authorized and/or required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

“Property” is described in Exhibit A and depicted on Exhibit B.

“Public Benefit Fee” shall have the meaning ascribed in Section 3.1 of this Agreement.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that NBCC is required to obtain to Develop the Project on and with respect to

the Property after the Agreement Date consistent with the Development Regulations and this Agreement, with the understanding that except as expressly set forth herein City shall not have the right subsequent to the Effective Date and during the Term of this Agreement to adopt or impose requirements for any such Subsequent Development Approvals that do not exist as of the Agreement Date.

"Term" shall have the meaning ascribed in Section 2.4 of this Agreement.

"Termination Date" and "Lot Termination Date" shall have the meaning ascribed in Section 2.4 of this Agreement.

"Transfer" shall have the meaning ascribed in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property will cause City's zoning and other land use regulations for the Property to be consistent with the General Plan.

2.2 Binding Effect of Agreement.

The Property is hereby made subject to this Agreement. Development of the Property is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 NBCC Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

NBCC and each person executing this Agreement on behalf of NBCC hereby represents and warrants to City as follows: (i) that NBCC is the lessee of the Property; (ii) if NBCC or any co-owner comprising NBCC is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if NBCC or any co-owner comprising NBCC is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising NBCC to enter into this Agreement have been taken and that NBCC has the legal authority to enter into this Agreement; (v) that NBCC's entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that NBCC or any person or entity comprising NBCC has to any third party; (vi) that neither NBCC nor any co-owner comprising NBCC is the subject of any voluntary or involuntary petition; and (vii) that NBCC has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)-(vi), inclusive, or affecting NBCC's authority or ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the "Term") shall commence on the Agreement Date and shall terminate on the "Termination Date."

Notwithstanding any other provision set forth in this Agreement to the contrary, if either Party reasonably determines that the Effective Date of this Agreement will not occur because (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City's voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations or risks hereunder or thereunder, then such Party shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that NBCC's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Property only (but not those general Development Regulations applicable to other properties in the City) shall similarly be null and void at such time.

The Termination Date shall be the earliest of the following dates: (i) the \_tenth (10th) anniversary of the Term Commencement Date, as said date may be extended in accordance with Section 5 of this Agreement; (ii) such earlier date that this Agreement may be terminated in accordance with Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute; (iii) or (iv) completion of the Project in accordance with the terms of this Agreement, including Owner's complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other NBCC obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

### 3. Public Benefits.

#### 3.1 Public Benefit Fee.

As consideration for City's approval and performance of its obligations set forth in this Agreement, NBCC shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Public Benefit Fee") in the sum of Ten dollars (\$10) per square foot of construction for the proposed golf clubhouse with the unpaid balance of said Public Benefit Fee increased on the first January 1 following the Effective Date of this Agreement by the percentage increase in the CPI Index between the Effective Date and said January 1<sup>st</sup> date (the first "Adjustment Date") and thereafter with the unpaid balance of said Public Benefit Fee increased on each subsequent January 1 during the Term of this Agreement (each, an "Adjustment Date") by the percentage increase in the CPI Index in the year prior to the applicable Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the

Effective Date of this Agreement falls on July 1 and the most recently available CPI Index figure on the first Adjustment Date (January 1 of the following year) is the CPI Index for November of the preceding year, the percentage increase in the CPI Index for that partial year (a 6-month period) shall be calculated by comparing the CPI Index for November of the preceding year with the CPI Index for May of the preceding year (a 6-month period). In no event, however, shall application of the CPI Index reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to any applicable Adjustment Date. NBCC shall pay the Public Benefit Fee at the following time(s): prior to issuance of the first building permit for the construction of the proposed golf clubhouse. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1. NBCC acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and NBCC's vesting rights to be acquired hereunder, and that NBCC expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for NBCC's default, if NBCC shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to withhold issuance of any further building permits, occupancy permits, or other development or building permits for the Project.

#### 4. Development of Project.

##### 4.1 Applicable Regulations; NBCC's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) NBCC shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest NBCC's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such



overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Development of the property includes approval of this Agreement, a General Plan Land Use Element Amendment, The Newport Beach Country Club Planned Community Development Plan, a Mitigated Negative Declaration and Site Development Plans that will allow NBCC to reconstruct the existing 23,469 square foot golf clubhouse to a maximum of 56,000 square feet with a maximum building height of 50 feet, subterranean golf cart parking and storage under the golf clubhouse, a golf course maintenance building and to provide an upgraded project entry, parking and landscaping. The project requires the approval of a Coastal Development Permit by the California Coastal Commission.

NBCC has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. NBCC represents and City acknowledges that NBCC would not make these expenditures without this Agreement, and that NBCC is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement.

NBCC may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic and, in addition, NBCC may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

#### 4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Effective Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that NBCC shall have the vested right to Develop the Project on and with respect to the Property at the rate,

timing, and sequencing that NBCC deems appropriate within the exercise of NBCC's sole subjective business judgment, provided that such Development occurs in accordance with this Agreement and the Development Regulations, notwithstanding adoption by City's electorate of an initiative to the contrary after the Effective Date. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts NBCC's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

#### 4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and NBCC shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where NBCC has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, NBCC shall be required to satisfy and pay all Development Exactions at the time performance or payment is due to the same extent and in the same amount(s) that would apply to NBCC and the Project in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction (excluding any development impact fee) for the Project has been established and fixed by City in the conditions of approval for any of the Development Regulations approved on or before the Agreement Date City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without NBCC's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest NBCC against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement:

(i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facility district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Section 3.12 of City's Municipal Code.

**4.3.5 Overriding Federal and State Laws and Regulations.** Federal and state laws and regulations that override NBCC's vested rights set forth in this Agreement shall apply to the Property, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) NBCC does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or NBCC shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and NBCC shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and NBCC agree to preserve the terms of this Agreement and the rights of NBCC as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with NBCC at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon NBCC. City also agrees to process in a prompt manner NBCC's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

**4.3.6 Public Health and Safety.** Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Property, even though the application of the ordinance, resolution, rule regulation, program, or official policy would result in the impairment of NBCC's vested rights under this Agreement.

**4.3.7 Uniform Building Standards.** Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent NBCC constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 No Guarantee or Reservation of Utility Capacity. Notwithstanding any other provision set forth in this Agreement to the contrary, nothing in this Agreement is intended or shall be interpreted to require City to guarantee or reserve to or for the benefit of NBCC or the Property any utility capacity, service, or facilities that may be needed to serve the Project, whether domestic or reclaimed water service, sanitary sewer transmission or wastewater treatment capacity, downstream drainage capacity, or otherwise, and City shall have the right to limit or restrict Development of the Project if and to the extent that City reasonably determines that inadequate utility capacity exists to adequately serve the Project at the time Development is scheduled to commence.

5. Amendment or Cancellation of Agreement

Other than modifications of this Agreement under Section 8.3 of this Agreement, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code section 65868 and City of Newport Beach Municipal Code section 15.45.060 or by unilateral termination by City in the event of an uncured default of NBCC.

6. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code section 65869.5, this Agreement shall be enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

7. Annual Review of NBCC's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. NBCC (including any successor to the owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 NBCC Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, NBCC is required to demonstrate good faith compliance with the terms of the Agreement. NBCC agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

### 7.3 Procedure.

The City Council of City shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not NBCC has, for the period under review, complied with the terms of this Agreement. If the City Council finds that NBCC has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that NBCC has not so complied, written notice shall be sent to NBCC by first class mail of the City Council's finding of non-compliance, and NBCC shall be given at least ten (10) days to cure any noncompliance that relates to the payment of money and thirty (30) days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of NBCC, NBCC must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If NBCC fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

### 7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of NBCC's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by NBCC or limit City's rights or remedies for any such Default.

## 8. Events of Default.

### 8.1 General Provisions.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (ten (10) days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) days in the event of non-monetary Defaults) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion.

### 8.2 Default by NBCC.

If NBCC is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider NBCC's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If NBCC's appeal of the Notice of Default is timely and in good faith but after a public hearing of NBCC's appeal the City Council

concludes that NBCC is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of NBCC's appeal is communicated to NBCC.

#### 8.3 City's Option to Terminate Agreement.

In the event of an alleged NBCC Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing NBCC with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if NBCC timely appeals any Notice of Default with respect to a non-monetary Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by NBCC. Any such judicial challenge must be brought within thirty (30) days of service on NBCC, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

#### 8.4 Default by City.

If NBCC alleges a City Default and alleges that the City has not cured the Default within the Cure Period, NBCC may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in NBCC's performance hereunder shall neither be a NBCC Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at NBCC's option (and provided NBCC delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

#### 8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

#### 8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both NBCC and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. NBCC and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate NBCC or City for such efforts. For the above reasons, City and NBCC agree that damages would not be an adequate remedy if either City or NBCC fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate NBCC if City fails to carry out its obligations

under this Agreement or to compensate City if NBCC fails to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees due from NBCC as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10.

8.8 Additional City Remedy for NBCC's Default.

In the event of any Default by NBCC, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to NBCC's Default without recourse from NBCC or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents.

No City official, employee, or agent shall have any personal liability hereunder for a Default by City of any of its obligations set forth in this Agreement.

8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation NBCC's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

## 10. Indemnity Obligations of NBCC.

### 10.1 Indemnity Arising From Acts or Omissions of NBCC.

NBCC shall indemnify, defend, and hold harmless City and City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties") from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of NBCC or NBCC's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of NBCC relating to the Property or pursuant to this Agreement. City shall have the right to select and retain counsel to defend any Claim filed against City and/or any of City's Affiliated Parties, and NBCC shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

### 10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, NBCC shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of attorney's fees, expert witness fees, and court costs. City shall promptly notify NBCC of any such Claim and City shall cooperate with NBCC in the defense of such Claim. If City fails to promptly notify NBCC of such Claim, NBCC shall not be responsible to indemnify, defend, and hold City harmless from such Claim until NBCC is so notified and if City fails to cooperate in the defense of a Claim NBCC shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in NBCC's indemnity obligation, provided that such counsel shall reasonably cooperate with NBCC in an effort to minimize the total litigation expenses incurred by NBCC. In the event either City or NBCC recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, NBCC shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

### 10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Agreement Date NBCC shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation attorney's fees, expert witness fees, and costs, based upon or arising



from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by NBCC in connection with NBCC's Development of the Project. The foregoing indemnity obligations shall not apply to any Hazardous Substance placed or stored on a separate legal lot within the Property after the Lot Termination Date for said lot, as provided in Section 2.4 of this Agreement. The indemnity provisions in this Section 10.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

#### 11. Assignment.

NBCC shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") NBCC's fee title to the Property, in whole or in part, to any person, partnership, joint venture, firm, or corporation (which successor, as of the effective date of the Transfer, shall become the "NBCC" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision ordinance and any such Transfer shall include the assignment and assumption of NBCC's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of NBCC's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Lease Property; and (ii) prior to the effective date of any proposed Transfer, NBCC (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor NBCC and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the NBCC assigns to the successor and the successor assumes from the transferring NBCC all of the rights and obligations of the transferring NBCC with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed off of the portion of the Property so Transferred that are a condition precedent to the successor's right to develop the portion of the Property so Transferred.

Notwithstanding any Transfer, the NBCC shall continue to be jointly and severally liable to City, together with the successor to NBCC, to perform all of the transferred obligations set forth in or arising under this Agreement unless the NBCC is given a release in writing by City. City shall provide such a release upon the transferring NBCC's full satisfaction of all of the following conditions: (i) the NBCC no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring NBCC is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring NBCC has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor NBCC either (A) provides City with substitute security equivalent to any security previously provided by the transferring NBCC to City to secure

performance of the successor NBCC's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project.

## 12. Mortgagee Rights.

### 12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit NBCC in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

### 12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

### 12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of NBCC or other affirmative covenants of NBCC, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by NBCC is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

### 12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by NBCC of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within ten (10) days after receiving a Notice of Default with respect to a monetary Default and within thirty (30) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within thirty (30) days after obtaining possession and, except in case of

emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the thirty (30)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within thirty (30) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within thirty (30) days and diligently prosecutes the cure to completion.

13. Miscellaneous Terms.

13.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:

City of Newport Beach  
3300 Newport Boulevard  
Post Office Box 1768  
Newport Beach, California 92663-3884  
Attn: City Manager

With a copy to:

City Attorney  
City of Newport Beach  
3300 Newport Boulevard  
Post Office Box 1768  
Newport Beach, California 92663-3884

TO NBCC:

Newport Beach County Club, Inc.  
  
1600 East Coast Highway  
Newport Beach, California, 92660 Attn: Perry  
Dickey, President

With a copy to:

International Bay Clubs  
  
1221 West Coast Highway  
  
Newport Beach, California 92663  
  
Attn: Dave Wooten, Chief Executive Officer

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

### 13.2 Project as Private Undertaking.

The Development of the Project is a private undertaking. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

### 13.3 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

### 13.4 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt. Requests for the City to furnish an estoppel certificate shall include reimbursement for all administrative costs incurred by the City including reasonable attorneys fees incurred by the City in furnishing an estoppels certificate.

### 13.5 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

### 13.6 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

### 13.7 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

### 13.8 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

### 13.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement Severability.

### 13.10 Severability

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that NBCC shall not receive any of the benefits of this Agreement if any of NBCC's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and NBCC shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of NBCC's obligations under this Agreement. The provisions of this Section 13.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

### 13.11 Construction.

Both City and NBCC are sophisticated parties who were represented by independent counsel throughout the negotiations or City and NBCC had the opportunity to be so represented and voluntarily chose to not be so represented. City and NBCC each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or

interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

13.12 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 13.12 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

13.13 No Third Party Beneficiaries.

The only Parties to this Agreement are City and NBCC. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

13.14 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

13.15 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

13.16 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B1 & B2	Overall Site Plan and Overall Site Plan Alternative

13.17 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

**[SIGNATURE PAGE FOLLOWS]**

**SIGNATURE PAGE TO  
DEVELOPMENT AGREEMENT**

“NBCC”

\_\_\_\_\_, a \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

“CITY”

CITY OF NEWPORT BEACH

By: \_\_\_\_\_

Its: Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Aaron Harp, City Attorney



STATE OF CALIFORNIA  
COUNTY OF ORANGE

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public in and for  
said County and State

STATE OF CALIFORNIA  
COUNTY OF ORANGE

On \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public in and for  
said County and State

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**[TO BE INSERTED]**

**EXHIBIT B1 and EXHIBIT B2**

**OVERALL SITE PLAN AND OVERALL SITE PLAN ALTERNATIVE**

**[TO BE INSERTED]**